

## COUNCIL MEETING

MARCH 12, 2014

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Wednesday, March 12, 2014 at 9:11 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum (*excused at 4:19 p.m.*)  
Honorable Mason K. Chock, Sr.  
Honorable Gary L. Hooser  
Honorable Ross Kagawa  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro

Chair Furfaro: I am going to ask for an approval of the agenda, but I have some housekeeping notes as it deals with the order of the day. I would like to make note that I am going to be asking for a deferral to some additional information dealing with Executive Session (ES) 709. This deals with some questions and answers regarding the attorneys providing information being sent over on the Sheilah Miyake case. I am going to be asking for a two (2) week deferral as they have not responded to all of the questions that I have. Also, on item C 2014-75, which is the legal document on the Rice Camp Senior Housing Project. Due to some substantial changes, they are requesting a specific time and I gave them no later than 10:15 a.m. for that purpose. We have a Resolution being introduced by Mr. Kagawa and we are going to take that up right after the scheduled public hearing at 1:30 p.m., so it will be about 1:40 p.m.

Mr. Kagawa: Chair, that Resolution is co-sponsored by Councilmember Rapozo.

Chair Furfaro: Okay. We are going to do that about 1:40 p.m. after the public hearing. We have two specific items that are time sensitive and one deals with Kaua'i Springs, ES-710, and Syngenta Seeds, ES-708. They will be taken at approximately 2:30 p.m. or 3:00 p.m. today. On that note, can I ask that I have an approval of the agenda with the order of the day as I laid it out?

### APPROVAL OF AGENDA.

Mr. Chock moved for approval of the agenda as circulated, seconded by Ms. Yukimura, and unanimously carried.

Chair Furfaro: We will go to the Public Comment period. May I ask the Clerk to read our Council Rule 13(e)?

### PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the

Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

Chair Furfaro: Thank you. Before I ask anyone if they want to come up to speak on any agenda item, I want to reiterate that it is my hope to be able to take all of the items that are in the open session before we break for lunch today. Is there anyone right now who wishes to speak on any agenda item? Seeing no one, I guess we will move on to the minutes.

MINUTES of the following meeting of the Council:

February 7, 2014 Special Council Meeting  
February 12, 2014 Special Council Meeting  
February 19, 2014 Special Council Meeting  
February 20, 2014 Special Council Meeting

Mr. Kagawa moved to approve the Minutes as circulated, seconded by Ms. Yukimura, and unanimously carried.

Chair Furfaro: We will now go to the Consent Calendar.

CONSENT CALENDAR:

C 2014-62 Communication (02/18/2014) from the Chair of the Public Access, Open Space, and Natural Resources Preservation Fund Commission, transmitting for Council information, the Commission's 2013 Report, in conformance with the requirement of Ordinance No. 812: Mr. Kagawa moved to receive C 2014-62 for the record, seconded by Mr. Rapozo, and unanimously carried.

C 2014-63 Communication (02/19/2014) from Councilmember Hooser, transmitting for Council consideration, a Resolution Appointing a Representative and Alternate to the Executive Committee of the Hawai'i State Association of Counties (HSAC) and Nominating a Representative to Serve as a Director on the National Association of Counties (NACo) Board of Directors, pursuant to Section 5 of the Bylaws of the Hawai'i State Association of Counties: Mr. Kagawa moved to receive C 2014-63 for the record, seconded by Mr. Rapozo, and unanimously carried.

C 2014-64 Communication (02/21/2014) from the County Engineer, transmitting for Council consideration, proposed amendments to Ordinance No. B-2013-753, as amended, relating to the Operating Budget of the County of Kaua'i, for the Fiscal Year 2013-2014, for projected fund deficiencies in the Solid Waste Fund for the following programs:

- a) Solid Waste Recycling – Greenwaste Diversion (\$340,000), Kaua'i Recycles Program (\$290,000), R&M of the Kaua'i Resource Center (\$40,000), and Abandoned Vehicle Disposal (\$30,000)
- b) Solid Waste Disposal – Operation of the Kekaha Landfill (\$350,000), Kekaha Landfill Liner Investigation Work Plan (\$100,000), Additional Storm Water Testing at the Refuse

Transfer Stations (\$30,000), and the Līhu'e Transfer Station Sprinkler Line Repair (\$20,000)

Mr. Kagawa moved to receive C 2014-64 for the record, seconded by Mr. Rapozo, and unanimously carried.

C 2014-65 Communication (02/21/2014) from the Director of Finance, transmitting for Council consideration, proposed amendments to Ordinance No. B-2013-753, as amended, relating to the Operating Budget of the County of Kaua'i, for the Fiscal Year 2013-2014, to account for both the additional revenue anticipated to be collected and the offsetting expenditures resulting from the Cat Licensing Program: Mr. Kagawa moved to receive C 2014-65 for the record, seconded by Mr. Rapozo, and unanimously carried.

C 2014-66 Communication (02/20/2014) from the Director of Finance, transmitting for Council information, the Period 5 Financial Report – Detailed Budget Report, Statement of Revenues (Estimated and Actual), Statement of Expenditures and Encumbrances, and Revenue Report as of November 30, 2013, pursuant to Section 21 of Ordinance No. B-2013-753, relating to the Operating Budget of the County of Kaua'i for Fiscal Year 2013-2014: Mr. Kagawa moved to receive C 2014-66 for the record, seconded by Mr. Rapozo, and unanimously carried.

C 2014-67 Communication (02/20/2014) from the Director of Finance, transmitting for Council information, the Period 6 Financial Report – Detailed Budget Report, Statement of Revenues (Estimated and Actual), Statement of Expenditures and Encumbrances, and Revenue Report as of December 31, 2013, pursuant to Section 21 of Ordinance No. B-2013-753, relating to the Operating Budget of the County of Kaua'i for Fiscal Year 2013-2014: Mr. Kagawa moved to receive C 2014-67 for the record, seconded by Mr. Rapozo, and unanimously carried.

C 2014-68 Communication (03/05/2014) from Councilmember Kagawa and Councilmember Rapozo, transmitting for Council consideration, a Resolution relating to ongoing initiatives at the legislative and State administrative levels regarding the management of coastal and marine resources around the island of Niihau: Mr. Kagawa moved to receive C 2014-68 for the record, seconded by Mr. Rapozo, and unanimously carried.

Chair Furfaro:

Mr. Clerk, please take us to the next item.

RICKY WATANABE, County Clerk: Chair, we have three items; C 2014-35, C 2014-36, and C 2014-58 that requires the Executive Session discussion first, so we should move that towards the end after Executive Sessions.

Chair Furfaro: Okay. We are moving these communications identified towards the end of today's agenda. Thank you. Next item, please.

#### COMMUNICATIONS:

C 2014-69 Communication (02/13/2014) from the Fire Chief, requesting Council approval to apply for, receive, and expend the 2013 State of Hawai'i, Department of Transportation, Highway Safety Grant in the amount of \$1,574.75, for the purchase of twenty-five (25) pairs of Ringor Barrier 1 extrication gloves to provide the Kaua'i Fire Department (KFD) firefighters with the necessary

protection to safely mitigate a vehicle accident: Mr. Kagawa moved to approve C 2014-69, seconded by Mr. Rapozo, and unanimously carried.

C 2014-70 Communication (02/14/2013) from the Executive on Aging, requesting Council approval to receive and expend State funds, and indemnify the State Executive Office on Aging for their intent to award the following to the County of Kaua'i, Agency on Elderly Affairs:

- 1) Kupuna Care funds in the amount of \$174,252 to provide services for case management, transportation, personal care, homemaker, home delivered meals, and adult day health services;
- 2) Healthy Aging Program funds for Enhance Fitness and Better Choices, Better Health in the amount of \$91,097; and
- 3) Aging and Disability Resource Center (ADRC) funds in the amount of \$26,783.

Mr. Kagawa moved to approve C 2014-70, seconded by Mr. Rapozo.

Chair Furfaro: I think we want to acknowledge that Ricky drove a brand new truck to work today and after twenty-four (24) years, his old vehicle finally gave up. I notice that he does not park under the plum trees anymore either. He is a little shaky on reading numbers. He must have seen that sales receipt. Is there any discussion here?

Mr. Rapozo: Is anyone here from Elderly Affairs? I have a question as it relates to the Meals on Wheels.

Chair Furfaro: May we ask you to come up? Thank you both for being here. Please introduce yourselves, and then I will give the floor to Mr. Rapozo.

There being no objections, the rules were suspended.

CHARLYN NAKAMINE, Program Specialist: Charlyn Nakamine, Program Specialist.

LITO ASUNCION, Program Specialist II: Lito Asuncion, Program Specialist.

Chair Furfaro: Thank you. Mr. Rapozo, you have the floor.

Mr. Rapozo: I guess I wanted to inquire about the overall status of the Meals on Wheels program. I had heard from some constituents that they are being told that the funding has run out, the services have been cut, and that they do not have any money. Is that true?

Mr. Asuncion: That is correct. We have a waitlist of about thirty-four (34) individuals, but we have a process of prioritizing who are those that could be on the waitlist.

Mr. Rapozo: What is the reason for that? Have we been getting more requests? Is the money dwindling?

Mr. Asuncion: Both. The demand is increasing, as well as the funds not being sufficient to meet the demands.

Mr. Rapozo: Does these one hundred seventy-four thousand two hundred fifty-two dollars (\$174,252) take care of the thirty-four (34)?

Mr. Asuncion: No, unfortunately not. That money that is coming in is for this Fiscal Year, so we are looking at the thirty-four (34) as the shortfall that we have. It is already ongoing, but we would need additional money for the upcoming year.

Mr. Rapozo: How much money would take care of that and bring the program up to—we have had this discussion, I think, every year.

Mr. Asuncion: Yes. Just on the maintenance effort, we need at least close to an additional eighty-thousand dollars (\$80,000).

Mr. Rapozo: To take care of the waitlist?

Mr. Asuncion: Yes.

Mr. Rapozo: Was there any intent from the Office to request those funds to help out those people?

Mr. Asuncion: I think our Executive had included some requests for the next budget cycle, but I do not know what amount... close to that amount, but I think we are only getting about sixty thousand dollars (\$60,000) or something.

Mr. Rapozo: What was that?

Mr. Asuncion: Sixty thousand dollars (\$60,000).

Mr. Rapozo: For this coming year?

Mr. Asuncion: For this coming year for the next budget.

Mr. Rapozo: For the next budget?

Mr. Asuncion: Yes.

Mr. Rapozo: So for this year...

Mr. Asuncion: That is none for this...

Mr. Rapozo: Okay. Can I ask you to ask your Executive to consider trying to get that this year?

Mr. Asuncion: An emergency supplemental funding for this year?

Mr. Rapozo: I think it is worth a shot because it is hard when these seniors come up and ask me how come when they call— for some reason, are the portions getting smaller as well?

Mr. Asuncion: No, the portions are the same. They have minimum standards to meet based on the specs of the Request for Proposal (RFP).

Mr. Rapozo: Is there fresh fruit?

Mr. Asuncion: Unfortunately not.

Mr. Rapozo: Is that because of the costs?

Mr. Asuncion: No. We leave it up to our contractor, which is Kaua'i Economic Opportunity (KEO), to meet the nutritional standards for the meal.

Mr. Rapozo: Okay. I am concerned... I know these meals are healthy in general, but I know just from my own personal information in talking to doctors about my own health that those canned fruits contain a lot of sugar and a lot of the recipients on Meals on Wheels are diabetic. They are telling me that they used to get fresh fruit. I am not sure if it is a cost thing, but maybe you can go back and find out if we can bring back the fresh fruit versus the high-fructose canned fruits. I am interested in trying to explore the possibility of funding to take care of that. Again, we have this discussion every year here and every year, it seems like we fall short and the waiting list gets bigger and bigger. I think as far as I am concerned, that is a priority for me. We will be seeing a lot of requests for supplemental funds for all kinds of things as the year runs out. I would hope that we could see one for your program for Meals on Wheels. I think it is vital and hopefully we can make that happen.

Mr. Asuncion: We thank you very much for your concern and we share that concern also.

Mr. Rapozo: Thank you.

Ms. Yukimura: Your waitlist are people who are qualified or are they, by your criteria, in "lesser need?"

Mr. Asuncion: In our criteria, it would be "lesser need." They would be eligible, but they would be "lesser need." For the nutritional program of home delivered meals, the ones who would be eligible are those who are homebound, but sometimes those other lesser ones would be a spouse who might not be homebound, but you are with a homebound spouse so they are able to get that meal, and then that would be a lesser priority, or those caregivers that could be caring for the homebound individual.

Ms. Yukimura: I see. You are meeting the need for all homebound requests right now?

Mr. Asuncion: Right now, yes.

Ms. Yukimura: Okay. I really share Councilmember Rapozo's concern about fresh fruit. Is it possible for... it will probably turn out to

have some monetary consequences, but for when you folks do your request for proposal, would be it possible to define or require that fresh fruit be part of the offerings of the meal?

Mr. Asuncion: That could be included in the specs if the first priority for fruits and vegetables be fresh fruits and fresh vegetables, even locally grown if possible. Maybe we can look at that in terms of our future discussions for the next cycle.

Ms. Yukimura: Yes. Thank you for your openness to that. I am a little leery of minimum dietary requirements because I know that at one point, ketchup was qualified for school lunches as a vegetable. That makes no sense to me, so maybe just a reevaluation of what, right now, we are requiring and then look at perhaps modifying those requirements to make sure that some of the diabetes patient's needs are met. I am sure it is tricky to meet all of the different dietary requirements, so you would probably have to go by a certain standard. If you folks would look at that, that would be appreciated.

Mr. Asuncion: Yes. We will make sure to follow-up, even during this current year as we start discussing it for the future.

Ms. Yukimura: Okay. Thank you very much.

Chair Furfaro: Other members?

Mr. Hooser: Thank you also. I want to support what Councilmember Rapozo was saying that in terms of immediate needs to eliminate your list and I would like to see what those are and have a request come forward if possible. Then moving forward on the budget, clearly, I would want to see the funding that you really need to fill the need. Could you tell me again how many people are on the waitlist right now?

Mr. Asuncion: About thirty-four (34).

Mr. Hooser: Thirty-four (34)?

Mr. Asuncion: Yes.

Mr. Hooser: Okay. These are homebound or not homebound?

Mr. Asuncion: Not homebound. These would be spouses or caregivers for the homebound families.

Mr. Hooser: Okay. Is there income eligibility?

Mr. Asuncion: No. Our programs are not income-based. Anybody who is sixty (60) and over would qualify for services, but the priorities is people who are homebound.

Mr. Hooser: Okay. I have to say that years ago, I went on a circuit with you folks with your organization and it was something that I will never forget. I realize the benefits are not just feeding people, but it is checking on those folks. I see this as a very important program and for the County, a relatively

modest amount of money, and want to continue to support the good work that you do. Also, the fresh fruit angle— I do not know if I would support that and also encourage, whether it is you, KEO, or whoever, that the provider look out for locally produced fruit. I would imagine that there are quite a few local producers that might want to actually support this program, perhaps even donating things. Thank you very much.

Mr. Asuncion: Thank you.

Chair Furfaro: Mr. Kagawa, and then Vice Chair Chock.

Mr. Kagawa: How does our amount we receive this year compare with the prior years from the State regarding the Meals on Wheels program? Are we getting the same as maybe in the past?

Mr. Asuncion: Yes, essentially it is the same. It is flat funding essentially, but luckily we have been getting some supplemental funds in between during the biennium, so that would add up a little, but it is steady and pretty much flat.

Mr. Kagawa: How has our service gone? Are we servicing the same amount of people?

Mr. Asuncion: It is increasing.

Mr. Kagawa: So how much people do we service right now?

Mr. Asuncion: About two hundred thirty-four (234) home delivered meals.

Mr. Kagawa: How many times a week?

Mr. Asuncion: Most people get their meals five times a week. There are those who might need it only three times a week, but that would be five (5) meals a week.

Mr. Kagawa: Not on the weekends?

Mr. Asuncion: Sometimes a few would be on the weekend, but that is another area where we would cut down in terms of priorities for those who might not need it on weekends.

Mr. Kagawa: Okay. Thank you very much. I concur with all of the Councilmembers. I feel like Meals on Wheels really keep our families living at home for those who cannot really get away from their homes and the burden on the families and their finances to go into nursing homes is much higher. It makes it difficult and I think the Meals on Wheels really save our people a lot of money and it is important. I even think it is important that we expand, if we can. Thank you and keep up the good work.

Mr. Asuncion: We thank you for all of your support and we will sharpen our pencil when we go back and encourage our team to work harder to come up with more realistic requests. Thank you.

Chair Furfaro:

Vice Chair, you have the floor.

Mr. Chock: Thank you. I want to concur with what was being said about the need here. Can you share with us who the vendor is that you folks work with?

Mr. Asuncion:

KEO.

Mr. Chock: Okay. I am guessing that probably the bigger challenge would be to figure out some of the procurement requirements because I do believe that there are farmers out there that can help with the need. Just on the top of my head, I know that at Waipā, they make poi every Thursday for *kūpuna* for one dollar (\$1) a pound, so there are ways that we can be creative if we can look at how it is that we can include the local community to help serve the need. Thank you.

Mr. Asuncion:

Thank you.

Chair Furfaro: Is everybody finished? I have a few questions. First of all, thank you very much. You are very close to your operating costs and so forth. The Kupuna Care is the one that handles the home delivery meals?

Mr. Asuncion: No. We have multiple funding streams. Kupuna Care is a State legislative appropriation and we have some money from the Council; that is the second one.

Chair Furfaro: Council?

Do you know how much you have from the

Mr. Asuncion:

I know roughly...

Chair Furfaro: We gave you eighty-one thousand two hundred thirty dollars (\$81,230).

Mr. Asuncion: That was cut from... we usually request over one hundred thousand dollars (\$100,000), I believe.

Chair Furfaro: Well, it started a couple of years ago on the compassion of Mr. Rapozo when we had to subsidize some money for the State. You say it was cut, but what I am saying is that after you got a taste of how much money we could support, you folks made a bigger request. You see what is happening; the State money is reducing.

Mr. Asuncion:

Yes.

Chair Furfaro: All of a sudden, it is becoming a County program. There was a rally at the State Capitol yesterday where almost one thousand (1,000) seniors in orange were asking the State not to cut their program funds for Kupuna Care. We have a situation going on there that we need to be very, very aware of. The actual breakdown of the one hundred seventy-four thousand dollars (\$174,000)— I am sure it will get approved today, but I would like to ask your office, number one— I will send over a communication to give us the breakdown of that one hundred seventy-four thousand dollars (\$174,000). I think it

is good for us to know. Secondly, in the applications, the applicants actually disclose their age for qualifications. The second question I would like to send over is how many are sixty (60) and older; how many are seventy (70) and older; and how many are eighty (80) and older?

Mr. Asuncion:

Okay.

Chair Furfaro: That will be a question. You do not need to write it down because the Staff is going to send it over. I just want to make sure that we understand because this is happening to us with a lot of State programs that we are stepping forward to do, what I think Mr. Rapozo and the other Councilmembers are saying, the compassionate thing to do. But there is also a point that we are now operating within some constraints. Please understand it was not like it was "cut" from the County; we threw in money that was really driven by Mr. Rapozo, but by the time we got to the third year, your request became bolder and bolder to us. We need to have some of these facts because I think the sense of wanting to help... the spirit is truly alive here at the Council, but we need more facts. For example, at sixty (60) years old, we would like to know of that group how many are actually homebound and disabled. It is the same thing for the 70's and the 80's group. I am sixty-five (65) and the way you presented to me is that I could qualify for home meals, no matter what my income is. We need to look where we can have the greatest influence for the right reason, for the right people. Unless we have more understanding of what this actual breakdown is... like of the money we get from the State, how much is actually going to the home delivery and the cost of the transportation? We would like to know that because I think you hear from the Council that there are members here who would like to improve the nutrition of the meals themselves, maybe including fresh fruit. We will send that communication over to you and hopefully, we will have more information at budget time. Thank you very much and my compliments to the Department for being well-prepared.

Mr. Asuncion:

Thank you.

Chair Furfaro: Members, are there any further questions? If not, thank you very much. Is there anyone in the audience that would like to offer some public testimony? Mr. Mickens, this is your first time in the batter's box this morning.

GLENN MICKENS: Thank you, Jay. For the record, Glenn Mickens. I just wanted to sincerely thank these people also for their hard work. I do not think there is a more important issue. I am way over that sixty-five (65) year-old limit, but as you are pointing out, Jay, I firmly believe what you are saying is one hundred percent (100%) true that the methodology by which they pick these people, I think, income has to be a major factor in it. To say that anybody that can afford to do it and then we do not have enough money for the other people that are actually that needy. There is something radically wrong there, so I think there definitely has to be means tested to make sure that the people who truly need this get this. I appreciate Mel bringing up the Meals on Wheels program, and as you pointed out Jay, all of those people rallying up yesterday and that the State has to do it, but the other point you bring up about this inequity between the County now having to keep on picking up the tab. Something should definitely be done with that because the County should not have to be... if the State is going to keep dropping it, we have to pick up more of that... anyway, I appreciate what these people are doing. Thank you, Jay.

Chair Furfaro: Thank you, Glenn. We have a question for you. Thank you for recognizing that it is important data for us to have. Mr. Bynum, you have the floor.

Mr. Bynum: Thank you, Glenn, for your testimony. Is this an area where you think the Council should put additional funds to keep the current level of services, even if the State has done it?

Mr. Mickens: Tim, if there are going to be certain people left out of the program and it is definitely because of funds, then I think the County definitely has the obligation to do it, but I think something is radically wrong anymore than the State taking away more and more of their Transient Accommodations Tax (TAT).

Mr. Bynum: Glenn, even though this is a State funded program that the County administers, we should supplement the State's funds because they have cut them to keep the current level of services. You would vote for that if you were a Councilmember?

Mr. Mickens: Yes, definitely. Thank you.

Mr. Bynum: Thank you.

Chair Furfaro: Are there any other questions? Is there anyone else who wishes to testify? If not, I am going to call the meeting back to order. Members, is there any further discussion?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: I want to thank the people from the Executive on Aging in the Office; one, for being prepared and for telling us what the current status is on this particular program. This is one of many programs that the State has decreased funding over the last several years. I concur with everything that was said here today. I think the fresh fruit was happening because of local efforts and we just had the Independent Food Bank here telling us about their gathering programs and their programs to put fresh food into the food system here. The Agency on Elderly Affairs and KEO are doing a good job following the Federal standards and I hope that we do look at this, but the Mayor has not submitted his budget. I am sure and we cannot fill every need that the State has reduced in the last years. I was in Kilauea on Monday at the senior center watching the meals being delivered, talking story with the seniors, and then I sat with Auntie DeFries from Anahola as paratransit came to pick her up and take her back home. She comes three or four times a week to the Kilauea Neighborhood Center. We have an outstanding support system and care through our County, but it is challenged as a lot of our budget issues. We administer this, but KEO is doing the delivery of the food and meeting the Federal standards and State requirements that are required. I just really want to acknowledge this outstanding program that I hope we can continue to fund and keep the level of service going. Thank you.

Chair Furfaro: Mr. Rapozo, did you want to speak?

Mr. Rapozo: Thank you, Mr. Chair. I just got back from Washington D.C. and it was a pretty depressing trip in the sense that it is getting

harder and harder for the Counties to lobby the Federal government to retain funding on some of these vital programs. That is where it starts— the Federal funding gets reduced, the State funding gets reduced, and then we are the final line of defense and the last stand for our seniors and our constituents. It is getting more difficult every year. National Association of Counties (NACo) puts out a valiant effort, but at the end of the day, it is going to be the seven (7) of us that decide what services we agree to subsidize. The Meals on Wheels— there is no income eligibility, but it is also true that many of the participants donate money back to the program. Can we have that in the communication like the number of participants, the ones who can afford, actually do donate money back to the program? Maybe we have to reinforce that more, but I think Meals on Wheels is one that is very important for the community. If you had to ask me— if we had eighty thousand dollars (\$80,000) that we could spend on any senior program— you have the exercising program and the other social programs; I would tell you right here, and I am not ashamed to say it, that Meals on Wheels would get my vote. That is a vital service, I believe. Yes, the income eligibility is concerning, but I believe that is a Federal mandate. You cannot go out and disqualify someone for that program. I think as we go through the budget session, our job is to look at what our priority of the body is and what our priority for the community is. I do not like the fact that we have to subsidize the State. I do not believe that the County should be responsible for all the social programs on the island, but at the end of the day, if we do not do it, it does not get done. We can complain all we want to about the State, but at the end of the day, it is not going to matter; it is not going to produce revenue instantly. We have to work with our State delegation as well and let them know that these programs are vital and we need the continued funding. I just think that if they cannot do it— I just heard coming in this morning on the radio... I guess President Obama is requesting... he is going to try and exempt the prohibition of some of his Federal employees that today cannot get overtime and he believes that they should get overtime. Well, I probably agree, but when you look at the financial situation of the Country, the State, and the County; again, where do you put that priority? Meals on Wheels or some overtime on some highly-paid government workers? I pick the Meals on Wheels. It is not a money issue; it is a priority issue and we have to get our priorities in line. Thank you, Mr. Chair.

Chair Furfaro:

Mr. Hooser.

Mr. Hooser: Thank you, Mr. Chair. I find myself wanting to sign up for Councilmember Rapozo's agenda on this, one hundred percent (100%). I recognize, Chair, that you talked about the increasing demands on the County and local government and I think the reality is that this is going to be a trend that is going to be increasing, not decreasing. Local people count on local government. We can lobby the State and lobby the Federal government, but at the end of the day, we have to figure out how to support some of these programs if we believe they are a priority, which I think we certainly believe this one is. I think getting good people together to work on this— we could figure it out. It might be important to get KEO or others to talk to them about how we increase revenue, whether it is through contributions or through fees, as well as the nutritional angle. I want also reemphasize the benefit of this program beyond nutrition. My wife's parents lived with us for many years and Claire's mom has since passed away, but I do not believe they qualified in income, but they got meals three (3) days a week. Claudia and I both work, so we are gone and sometimes they would just forget to eat. They would just not eat because either they would forget or for whatever reason. I never forgot... I think it was Thursdays, that they would get all excited because Meals on Wheels would come. I believed they made some contributions, but I do not know

that. I think we have to remember that even people with money get lonely and get hungry and we have an obligation to these folks. I certainly want to support this effort. Again, I think there are ways to do it to offset the direct costs to the County if we get creative on it. Of course, we will need to be; the Administration and the vendor, because they are the ones who actually do the work and they are the ones charged with administering this program. I am happy to support it and happy to hear the Council share that support. Thank you.

Chair Furfaro:

Vice Chair Chock.

Mr. Chock: I do not mean to be redundant, but we are an island of creative and talented people with huge resources that can address the needs of our people. I just want to restate where the trend is going because it is more of a call to the community to understand that as well that because we are moving in this direction, it is going to require us to look at how it is we take care of our own people. There is no reason why thirty-four (34) cannot get what they need or anybody else for that matter. I think that with the collective minds coming together, along with the resources out in the community, being creative and addressing this is really the answer for many of the things that are coming up. Thank you.

Chair Furfaro:

Mr. Kagawa.

Mr. Kagawa: Thank you, Chair. As we sit here, some day we may be in that category and I think it is important for us to set the precedent now and forever that this will be a priority of the County. A lot of these people who at home are just humble people, so we do not hear their voices and we are the ones that need to be their voice. I thank the Council for sharing the sentiment. Thank you.

Chair Furfaro:  
the floor.

Anyone else before I speak? JoAnn, you have

Ms. Yukimura: Thank you. I think it is very important that our elderly are fed well and not only physically, but that their social needs are also attended to. At the same time, we have limited financial resources so it is really the responsibility of us, who make decisions about taxpayer moneys, to make sure that they are used optimally. I think Councilmember Chock saying that we need to be creative, responsible, and accountable is really important. I think income-based is important, but if there are other ways that we can also address the social needs that are important. Prevention is important. Exercise and physical fitness keep people from being homebound. Twenty thousand dollars (\$20,000) or forty thousand dollars (\$40,000) seems like a small amount, but that could pay for a position in the Transportation Agency that can expand our bus system and can help a whole lot of people. There are just a lot of needs. I am saying that I think I support meeting the goals of feeding our elderly people who need these Meals on Wheels, providing them with social contact, and let us see how we can do that as efficiently as possible so that we can also meet other very, very critical needs that our County is trying to address.

Chair Furfaro: Okay. Well, I want to just say that this piece is one where I want to make sure— especially that the Department understands that there is an issue about obligation where this is a State program. We also have to indemnify them and so many other pieces in administering the program. At the

same time, I want to make sure we understand that we are not talking about our obligation; we are talking about the values that represent the spirit of compassion. For the County to go beyond and above the expectations of the program, which is a State program, really boils down on the spirit of compassion. As we know here in the County of Kaua'i, that is about the value of *kōkua* and the value of *aloha*. I just want to say to you that if that is what it is going to be based on going forward, then it is important for these agencies in the County to understand that we need factual information. If we are going to extend this *aloha* because it is the right thing to do for the right people, then we need to be able, in our mind, to understand our compassion for the program; not making up for the shortfall in the State's obligation. We need to do it through those values that we know. I will be supporting this. I will send a communication over to ask for more facts by the time we get to budget. Again, thank you very much.

The motion to approve C 2014-70 was then put, and unanimously carried.

C 2014-71 Communication (02/20/2014) from Council Chair Furfaro, requesting the presence of the County Engineer to provide an update on the status of the Comprehensive Road Maintenance Plan: Mr. Kagawa moved to receive C 2014-71 for the record, seconded by Mr. Rapozo.

Chair Furfaro: Mr. Dill, I would like to make this as an overview at this point. Remember that we have a date of April 1, which we will talk into the specifics as we come up on the upcoming budget. Glenn, you might want to make note of that date because I know you are interested in roads. The details will be handled on April 1. Larry, we do have another scheduled update at 10:15 a.m. from Housing, so I will let you have the floor to make your presentation.

There being no objections, the rules were suspended.

EDMOND RENAUD, Chief of Field Operations and Maintenance: Ed Renaud. Good morning, Council Chair and Councilmembers. Ed Renaud, for the record.

LARRY DILL, P.E., County Engineer: Good morning, Council Chair and members of the Council. For the record, Larry Dill, County Engineer. Ed and I are over here and Ed will be giving you this overview of where we are with the Comprehensive Road Maintenance Plan.

Chair Furfaro: Excuse me. I am going to relocate myself so I can watch the presentation. I am going to turn the floor over to the Vice Chair.

Mr. Renaud: Okay. What we have here is the Department of Public Works, Roads Division, Comprehensive Road Maintenance Plan. MicroPAVER provides pavement management capabilities. The goals and initiative of those capabilities is to develop and organize the road pavement inventory, assess the current conditions of the pavement, develop models to predict future conditions, report on past and future pavement performance, develop scenarios for maintenance and repair based on budget or conditions of the pavement, and plan projects, which are the normal roads which one hundred percent (100%) is County funded and collector roads are shared twenty percent (20%) County and eighty percent (80%) Federal funded. Our success measurements include that our program has been procured; existing inventory data on file not accurate on pavement conditions, so we contracted a consultant to provide/create inventory lists

of the County of Kaua'i roads data; road pavement condition list generated by the consultant was an Remaining Service Life (RSL) and Pavement Condition Index (PCI) generated by consultants; field verification of the failing pavements by consultants still need to take place; detailed site inspection and core sampling by County of the failing pavement verified by consultants will then take place; and training of staff ongoing and for a total of nineteen (19) days of training, four (4) has been completed with the program. The estimated outcome of the MicroPAVER program— training is to December 2014 and the initial pavement condition data as follows: for the Kapa'a District, the big dollar amount for the reconstruction is estimated at forty-nine million dollars (\$49,000,000); Hanapēpē falls second with reconstruction estimated at twenty-eight million dollars (\$28,000,000); and Hanalei District with reconstruction estimated at eighteen million five hundred thousand dollars (\$18,500,000). On the overlay for those districts; again, Kapa'a is leading again. It is the same Kapa'a/Hanapēpē/Hanalei, but it is five million five hundred thousand dollars (\$5,500,000) for overlay. Hanapēpē is three million dollars (\$3,000,000) and Hanalei is two million dollars (\$2,000,000). I am open for questions first.

Chair Furfaro: Wait a minute. If you are going to make decisions about how the meeting is ran, that is not your decision; that is my decision. I want you to make the whole presentation because I am at a disadvantage now because I am over here. Let us make the whole presentation, and then I will open up the floor for questions.

Mr. Renaud: That is the presentation.

Chair Furfaro: That is what I wanted to hear. Thank you, Ed. Mr. Bynum, I will recognize you first.

Mr. Bynum: Thank you, Ed and Larry. We have all been following this MicroPAVER and I really appreciate this update. I have had two things that I want to focus on. This initial paving condition data comes from... basically, it is over one hundred million dollars (\$100,000,000), so you are saying they have actually discovered one hundred million dollars (\$100,000,000) of backlog need. Is that a fair summary?

Mr. Renaud: That is estimated, correct.

Mr. Bynum: Roughly, what are we thinking in round numbers is our annual paving budget? I am not asking what you are submitting. That will come next week.

Mr. Dill: My understanding... I believe historically is that we have had a budget for Islandwide Resurfacing in the vicinity of one million two hundred fifty thousand dollars (\$1,250,000) to one million five hundred thousand dollars (\$1,500,000).

Mr. Bynum: Okay, so we take one hundred (100) years to meet these needs. I am very appreciative of this effort. Did the Council fund this consultant that is doing the inventory? I do not recall it.

Mr. Dill: Yes.

Mr. Bynum:  
MicroPAVER to begin with?

That was when we approved the

Mr. Dill:

Correct.

Mr. Bynum:  
halfway through.

They have not completed the work. They are

Mr. Dill: The initial assessment, which is a visual inspection of all the roads, has been completed. We have a lot of ongoing training because it is a very involved, detailed program. In order for them to perform to its optimum is still ongoing.

Mr. Bynum: Well, some of this should really warm the heart of the people in Kaua'i that have paid attention to roads for many years because just in this list of things that the consultants are doing were the things that I heard members of the public ask us to do for many years. I have one more question about your bullet point that said "existing inventory data on file not accurate on paving conditions." Can you say why that is, what existing data there is, and where it is stored?

Mr. Renaud: Yes. In order for us to know about our roads, I needed something. When I checked files, I checked within the Department, but I could not find anything accurate. So what do we do? What is the next step? How do we determine the next step? What do we own out there? What are the conditions of the roads? For us to go out there and do that, we are limited meaning the "County bodies." The fastest way was to find a consultant that does similar work like this, so what I did was I talked to my counterparts on the different islands. They came up with different names, we put out a bid, we setup the specifications of what we were looking for, a consultant came in, and we hired that person to go out there and do this. With that information, it goes into MicroPAVER and it sorts out everything. That is not complete; that is just one part of the version. The thing is that we still need other history of existing pavement projects that we did out there and I could not find anything. This is where we are still on research and whatnot, and to make this program work properly, we need everything. Talking to Dr. (inaudible) who is the so-called "Specialist" from the University of Hawai'i said, "We work with what we have presently and we look at everything else out there to make this work." They have us different scenarios.

Mr. Bynum:

I appreciate that.

Mr. Dill: If I may add to that, on page 4, you can see that we have done the initial assessments, but near the bottom we talk about field verifications of failing pavements and subsequently core sampling.

Mr. Bynum:

Yes.

Mr. Dill: We recently came to the Council with a request and received approval for the pre-collector roads. We used the initial assessment that was done to identify areas, and then we confirmed in more detail by doing core sampling of the road to find out what exactly needed to be reconstructed so that we are spending the money properly. That is the plan for all the roads.

Mr. Bynum: I appreciate your response on this, Ed. In that response, you have demonstrated that you have reached out to other Counties and you have done your homework. Basically, you looked at our current data set and said, "We cannot plug this into the system because it is garbage," right? It would be garbage in, so if we put garbage in, we get garbage out, right?

Mr. Renaud: Correct.

Mr. Bynum: That was basically your assessment so you are saying, "The current state of our data inventory on roads is worthless, so we need to start from scratch."

Mr. Renaud: Right.

Mr. Bynum: I admire that. I am really glad that you did that assessment of the current data to see if it needed to be included because this is a Countywide issue. I have been discussing it with the Chair and I think we will discuss it here during budget and in other areas that we need to not make the mistake of trusting our existing data unless we verify it. You did that and I really admire that. Thank you.

Chair Furfaro: Mr. Kagawa, and then JoAnn.

Mr. Kagawa: Thank you, Chair. On your third page, you have those forty-nine million dollars (\$49,000,000). So that is for all the roads in that district?

Mr. Renaud: Correct.

Mr. Kagawa: But not all of those roads in that district are in immediate need of repair, right? I think a more accurate document that we could have would be "how much to reconstruct all of the ones that are pretty much in immediate or dire need?" I believe there are some... like the road behind the Kilauea service station is in dire need of immediate repaving. It is highly used and it is just horrible. If we can have some kind of list like that heading into the budget, that gives us a more realistic picture. We have one hundred million dollars (\$100,000,000). That is not a help to me, really. This just tells me how much it will cost if every road not in dire need... that is how much it will cost and we do not have nearly... one hundred million dollars (\$100,000,000) is a whole budget.

Mr. Dill: If I may elaborate a little bit— this is not reconstructing every road in that district. This is based on our initial inventory assessment, which roads require reconstruction and which portion of which roads. You are right that if we went and reconstructed every issue that we are aware of and resurfaced everything that needed to be resurfaced, this would be the cost. We will certainly come to budget with a prioritized list of roads to be resurfaced and reconstructed.

Mr. Kagawa: Thank you. What is the difference between those one, two, three items and the overlays?

Mr. Renaud: The reconstruction— that is the first part. Those are the roads that need to be repaired. Now, when you look at our list, it is not about the whole road.

Mr. Dill: Elaborate a little bit on what you mean by "repair."

Mr. Kagawa: Repair means scraping it? Down to grade?

Mr. Renaud: On the reconstruction, with the visual inspection that was done— there are alligators, cracks, and everything in the road, but it does not necessarily mean that the base underneath there is bad. What we do is we do a core sampling. The core sampling tells us if the base needs repairing. So looking at this number, this is the big ballpark number, but the thing is when we do the sampling, then we determine what the actual costs will be. Number two— the thing is that it is not the whole... from this intersection... there are segments that need repair, so this is where we are at.

Mr. Kagawa: Okay. For the core sampling, do you guys take multiple core samples?

Mr. Renaud: Yes. We take as much as we need to. We are doing it ourselves. That is one portion; that is the big dollar amount. "Overlay" is there are no repairs that need to be done and we are just going to resurface. That is all it is.

Mr. Kagawa: Okay. I have seen some of those overlays and what happens is that the pavement gets so high that it is almost like... when the cars go off, it is really in a precarious position and we had a complaint. I sent one to you about Hanapēpē Heights where they went right over and they said because the road is narrow, when they go to the side when a big truck is oncoming, they call it "dangerous." I have not driven it, so I cannot say it is dangerous, but you know what I am saying. It is nice when we can always... if the road is really bad, at least scrape it down and lay over that so we do not have that big height difference that happens with the overlay. But I understand that money is the issue.

Mr. Dill: We include that in our scope areas where either the pavement has failed or because it is getting too high. We would cold plane out the existing asphalt, and then put back the same depth when we resurface. As you pointed out, there is a cost associated.

Mr. Kagawa: Is there a way to... this is what I heard is that some of the roads to get repaved— what happens is a lot of times, we pay way too much and sometimes we pay that fair price, but is there a way to put in our bid and upset price so that if nobody bids lower than upset price, then we reissue the contract or reissue the bid because... I do not want to say that because that is the only bid that came in, it is fair to just issue it out even though the taxpayers are getting ripped off. Going forward on those big types of bids, I think what could happen is that competitors could say, "Okay, you bid on this one and I will bid on that one." The County could end up really paying much too high of a price for what is being done.

Mr. Dill: Unfortunately as you are probably aware of, there are only two (2) contractors on the island, but we can look into that.

Mr. Kagawa: That is why I am saying that if we can be creative and work with Purchasing and find some way to determine what a fair

price is by measuring. That is how they measure how much a roof would cost. They just measure and determine what quality needs to be done and what have you, but that is my last point. Thank you.

Chair Furfaro:

JoAnn, you have the floor.

Ms. Yukimura: Thank you. I am very pleased and grateful to have this information. It feels like I have been waiting with others for a long, long time, but without the information, we cannot begin to address the problem. Thank you for all of the effort in that. What I feared is also shown in the information that we are so overdrawn in terms of our lack of maintenance for our roads for so many years that we have this huge bill. It is much bigger than it should or could be because we have not done timely, preventative maintenance and repaving and how we are going to dig ourselves out of this hole— I do not know, but it is crucial that we do because we cannot keep allowing the roads to deteriorate into a condition where they need reconstruction. I am counting on the Administration to have a plan for how to get out of this and a long-term plan because as Councilmember Bynum pointed out, if we go by the historical income, it will take us one hundred (100) years. In the meantime, other roads are going to be deteriorating to the point of reconstruction. That is definitely a “no-win.” Can I ask to clarify— “reconstruction” is where you have to rebuild the whole road from scratch and “overlay” is basically regular repaving?

Mr. Renaud:

Just the resurfacing.

Ms. Yukimura: Which is where we want to get to for all roads, I am guessing.

Mr. Renaud:

Yes.

Ms. Yukimura: Okay. It is like the reconstruction has to overhaul your car versus overlays are like regular maintenance and tune-ups, right?

Mr. Renaud:

Correct.

Ms. Yukimura: To one extent, a program to address this would start with your overlays to make sure that you are keeping that from getting into reconstruction.

Mr. Dill:

Yes. We are looking at more than that. Aside from reconstruction and overlays, there are other options like seal coating, slurry sealing, crack sealing, and all of those things will serve to extend the life of the pavement before it has to be resurfaced. We are looking at options to implement those sorts of program as well to keep roads, as you pointed out, to prevent them from getting to the reconstruction phase.

Ms. Yukimura: So you are saying that you are exploring what might be best practices for resurfacing?

Mr. Dill:

Yes. We define “resurfacing” as “adding a layer of asphalt.” In between resurfacing, we would probably come back and do a “slurry seal,” which means instead of having to resurface every ten (10) years, maybe we could resurface every twenty (20) years because the slurry seal should theoretically be a lot less expensive than resurfacing.

Ms. Yukimura: Excellent. So the life cycle costs would be much less for these resurfacing techniques that last longer?

Mr. Dill: Correct.

Mr. Renaud: For example, like Larry said, if we do our road properly and correct the condition it is, it should last us twenty (20) years; twenty (20) years meaning that we would have to make sure water does not come into the pavement that it is created swells, drainage, and whatever there is. The other thing, to get five (5) more years out of that; let us say between two (2) and three (3) years after we replace or correct this road, we need to seal coat that road. This way, in case there are any cracks and what not, we are stopping the cracks so water does not get below the surface.

Ms. Yukimura: Okay. That raises two (2) questions for me; one is there special scrutiny that we have to do when developers first create the road to make sure that grass does not start growing in the road like two (2) years after they have created the road? That is one. Two, how do we deal with potholes, which allow water seepage in and are there special techniques for dealing with potholes that will mitigate the water seepage? Are we needing to pay attention to that in ways that we have not done up to now?

Mr. Dill: Speaking to the pothole issue, the Council approved our request for funding for a pothole repair truck, so we have recently acquired that equipment and training the crews so that... you have heard at Council before that the members of the public are concerned about us using Cold Patch to repair a pothole. The pothole truck will allow us... we will go out and actually saw cut the pavement and do any reconstruction necessary and we will be able to do a hot mix pavement, which will help to keep water from intruding and it has a longer lifespan. The reality is that we can only pave when the asphalt plant is batching asphalt. What you may see is that we will go out there, saw cut, put in coal mix as a temporary measure until the next time we can get asphalt from the batch plant, and then we will come back out, remove the coal mix, and put the hot mix down to complete the repair.

Mr. Renaud: What we are trying to do in the learning/training process is we square off the pothole with our truck (inaudible); all of the equipment and tools is with that truck; materials are on both sides. If the plant is open, we have asphalt concrete (AC) on one side and the base on the other side. We square off the area and make sure water is out. We compact and add the base in. If we do not have hot AC, we will put a layer of coal mix. Within that segment or section, we know how many squares we have completed. When the plant is open, we go back, pick up the AC, open up the coal mix— coal mix is only a temporary mix; you can pick it up. Then we come back and go back with the hot mix. In times where we had this bad weather and the rains come in, we just had to put coal mix in, but we took an area and logged it into our dailies that this is the area where we have to come back and remove the coal mix because that is not acceptable when you resurface.

Ms. Yukimura: Okay. What I hear is that you are addressing the issue of potholes and I do not want to get into too much detail right now, but I guess at budget time, we will talk about this because to me this seems like the overall program you have to implement in order to catch up here.

Mr. Renaud: Correct.

Ms. Yukimura: Will you have a proposal for addressing the reconstruction needs on April 1?

Chair Furfaro: Yes. We are not going to be expecting anything less.

Mr. Dill: Chair, as we mentioned for MicroPAVER, we will still have training happening through the end of this year so I cannot say that in April we will have an entire complete program ready to present to you.

Chair Furfaro: I will say yes.

Ms. Yukimura: Without a complete program to propose to us, you will not have a budget because you will not know what your budgetary needs without a complete program.

Mr. Dill: We will definitely have a budget. We will have a proposal to you with prioritized roads based on the work that we have done so far to present to you.

Ms. Yukimura: Yes, but that is not going to get us to the point of catching up.

Mr. Dill: Correct. As you can see, we presented numbers to show you what the scope is and what the cost is. Obviously, we are way behind the curve but that will not prevent us from presenting to you based on the work that we have done.

Ms. Yukimura: I understand, but I will tell you that if you just continue doing this year after year and giving us priority roads that fit the one million five hundred thousand dollars (\$1,500,000) we get ever year, we are going to be in really hot water with this.

Mr. Dill: I do not think I said that we are going to continue to do this year after year. I never said that comment.

Ms. Yukimura: Okay.

Mr. Dill: We are here today to tell you that we have a program that we are moving forward with and completing, and moving in the direction of creating a program so we can tell you how much money we will need on an annual basis. The reality is that it will be dependent upon how much this County can afford. Obviously, we cannot afford to get all of these things done in the next couple of years, so we are going to have to see what budgets are available to us to do the best we can here.

Ms. Yukimura: Okay.

Chair Furfaro: I would like to see if I could summarize this so we can go to the Housing item.

Ms. Yukimura: Do you want to do that now or should I finish?

Chair Furfaro: I am asking you if you can finish, and then let me summarize it.

Ms. Yukimura: Okay. I hear what you are saying that we can only do what we have money to do, but we cannot afford not to do this because the cost gets bigger by not doing it. My last question is can bond money be used to fund reconstruction because it is not just a repair?

Mr. Dill: Yes. My understanding is that we can.

Ms. Yukimura: Okay.

Mr. Dill: I want to confirm that with our Finance Director, but I believe we can.

Ms. Yukimura: I see him nodding his head. Okay, so that could be included in your budget.

Mr. Dill: Yes.

Ms. Yukimura: Thank you very much.

Chair Furfaro: We can carry this on, but we have some specific dates that I announced earlier, but I have some summary here that says what I am expecting. What you presented to us came very short of what I am looking for, but at the same time, I want to compliment you but I have been waiting two (2) years to get us to this point... two (2) years we approved this paving piece. Three (3) years ago, we gave you folks an extra one million dollars (\$1,000,000) to get us caught up and it was not spent. I know that was not during your reign, Larry, but I have to tell you...

Mr. Dill: My reign?

Chair Furfaro: Yes. That is right. Right now, you are the "king of the roads" and there is a song to that effect. I think it comes out of Tennessee, "King of the Road." So let me summarize what my expectations are. First of all, this piece needs to tell us the spending plan and I think it needs to be based on a ten (10) year forecast and that is what I am looking for at budget time. I would like to understand what kind of State and Federal moneys are available to us. That has to be part of the plan. What do we have to do to apply for those State and Federal moneys? How can we accelerate anything that deals with these roads that are in the collector qualification where we only pennied twenty percent (20%) of it and we get help with the other eighty percent (80%)? On the Capital Improvement Project (CIP) items, we need to know at what time in the near future the Finance Department will agree with the Administration to float bond moneys. Is it three (3) years from now? How does it fit in to the bridge plan? Ninety-two million dollars (\$92,000,000) of what you showed us is deferred maintenance on bridges. That is a big number. We need a plan that tells us where that money is coming from. I would also like to say that I would like some kind of a performer from you that indicates if the gas tax goes up two cents (\$0.02) and four cents (\$0.04); what does that add to our road budget? You are right— we only get one

million four hundred thousand dollars (\$1,400,000) per year based on the current tax base. I am not saying that I am promoting the tax here, but that has to be part of this plan; not just giving us one hundred million dollars (\$100,000,000) in costs, but also telling us where the revenue opportunities are for us from other political subdivisions and surfaces. The roads across this Nation are in trouble. The Federal government is making freeway and highway money available and so forth. We must have an opportunity to see what we can qualify for.

Under the plan, we supported this repair truck for potholes and so forth because it was told to us that it would buy some time and at that time, we would then consider the use of slurry seal to extend the life... what is the slurry seal program? What existing roads do we have that we can seal right now that will buy us... what is that plan? Then of course, I do say that we have one million two hundred thousand dollars (\$1,200,000) that is in a carryover fund for next year and that will be matched with about one million four hundred thousand dollars (\$1,400,000); it is what we currently collect. I hope we are going to have a schedule laid out that we are going to do something pretty immediate with about two million six hundred thousand dollars (\$2,600,000) and the hope of that was to give us more Repair and Maintenance (R&M) on existing roads. Larry, I want to compliment you folks in taking us over the time that you have been with us in this plan, but we have to put the old plan, which has a "first aid" and "band-aid" label on. We have to put that plan on the shelf. We need this ten (10) year process and we gave you time to be learning about this. The learning curve has to kind of fade into an action plan here pretty soon, and that is what we are looking for. I do not care if it is just a simple breakdown of where these revenues are for us, but I am expecting that with no exceptions. I am expecting that finance part of the plan in the budget. I think that is satisfying us at this point knowing that at least it is a ten (10) year plan. For a ten (10) year plan, we know it would generate about twelve million dollars (\$12,000,000), but that still leaves eighty-eight million dollars (\$88,000,000) and the substantial part of it is on about four (4) bridges. We need to know what is available to us. I think that is reasonable for us to expect. I am not asking you for all of the fine points, but that is what I am expecting and I hope you can meet it. We are going to come back to this because as I told you in the beginning, I have the Housing people who have requested for 10:00 a.m. You folks can all have a second round. We are going to break now for Housing.

Mr. Kagawa: Housing is going to need more time. There is a few kinks that they are trying to work out.

Chair Furfaro: I am glad they told you because I called them at 8:30 a.m.

Mr. Kagawa: No, it just happened in the last five (5) minutes when I stepped out.

Chair Furfaro: Good, because I sent over a bunch of questions. Thank you for sharing. We can continue and with the continuation, I will recognize Mr. Bynum.

Mr. Bynum: Chair, I want to honor the process and we are done with questioning and we are in discussion...

Chair Furfaro: No, but we are still asking questions for them.

Mr. Bynum: I have asked my questions, but I want an opportunity to make comments.

Chair Furfaro: We will do that in the end. I just wanted to clarify what I am expecting at budget time. I am looking for the bones of the plan that also include where we think we are going to get the money from. You have the floor.

Mr. Bynum: I am really trying to ask questions during question time and save my comments for the period at the end, so I do not have any further questions.

Chair Furfaro: Okay. I will give the floor to Councilmember Kagawa. You are raising your hand because you had Housing information?

Mr. Kagawa: Yes. I just wanted to share with the Council that the Housing issue is not needed right at this moment and that they are trying to work out a few kinks before they come before us. Thank you.

Chair Furfaro: Thank you. I will give the floor to Councilmember Yukimura.

Ms. Yukimura: In part of your programming or your assessment, you also have to know how many new roads are added to the County inventory each year, right? The clock will start ticking on that road and assuming that it is well done, it will last twenty (20) years with the proper kind of maintenance. I want to make sure that is in your calculations. I also want to know if other Counties and/or the State doing similar assessments like we are like looking at the whole picture or are they just going year-to-year?

Mr. Dill: Yes, they are various stages of implementation and taking somewhat different approaches. By and large, they are looking at overall management systems to try and plan long-term solutions for the real maintenance issues.

Ms. Yukimura: What about the State?

Mr. Dill: I do not have the particulars on their program, but my understanding is that they are...

Ms. Yukimura: This bill of one hundred million dollars (\$100,000,000) is just about County roads, right? It does not include the State roads at all.

Mr. Dill: Correct.

Ms. Yukimura: On our island— I do not know how many miles of road the State has versus how many miles of road the County has, but if we are talking about a whole system, the State is part of the system and I just wanted to know what was happening to that part of the system. I am going to ask the State to come and brief us on their long range plan. Maybe we will get to ask them then.

Chair Furfaro: I would be glad to have them here if you want to compose what your questions might be.

Ms. Yukimura: Okay. I have one last question. On page number two where you talk about on slide number four— “Remaining Service Life and Pavement Condition Index generated by consultants.” Last year at budget time, you have us a document that showed us, so you were done with that last year... that stage.

Mr. Renaud: We were done with that last year, but in order to get this in the program, with the information we gathered from our consultant and the MicroPAVER specialist, Dr. (inaudible); that is what he is doing right now.

Ms. Yukimura: Okay, so this “field verification of failing pavements by consultants still need to take place”...

Mr. Renaud: No, that is the question that will get to the outcome. That is completed except that the County has to complete their core sampling to really determine if that road is that dollar amount.

Ms. Yukimura: You are bullet number six right now; “detailed site inspection in core sampling by County of failing pavement.”

Mr. Renaud: Correct.

Ms. Yukimura: So you are doing six and seven together?

Mr. Renaud: Yes.

Ms. Yukimura: You expect to finish these two phases by the end of this year, December 2014?

Mr. Renaud: That is the training module for MicroPAVER.

Ms. Yukimura: Okay. You are expecting to finish the training by December 2014, but when will you finish this detailed site inspection and core sampling?

Mr. Renaud: We should be able to finish it because we are in the process right now and ongoing, and the thing is that we are not completed. We just completed the core collector roads project and we did all the sampling for that.

Ms. Yukimura: Okay, so what you are saying is that these figures on slide number five are estimates and when you finish your core sampling and your verification, you will be able to give us pretty firm estimates on these costs. Is that correct?

Mr. Renaud: When we setup the list for you... we have the whole list all made out already, but we have to...

Ms. Yukimura: Your priority list?

Mr. Renaud: Yes. It is not completed on the core sampling because that takes a little time. Right now, we are running; we are not walking—we are sprinting, let us say.

Ms. Yukimura: Okay.

Mr. Renaud: Anyway, that is where we are at. The thing is that we should be able to finish all of that.

Ms. Yukimura: Okay. The long range plan— I am expecting you to come in and say, “We need this much money to do the reconstruction and this much money to do the overlays. If we have so much in bond money and so much in reoccurring revenues; operating expenses like vehicle weight taxes or fuel taxes, user fees to help pay for the costs of their use of the roads, and then we will be able to come up to a working, timely, and preventive maintenance program within five (5) years, ten (10) years, or one hundred (100) years.” You are going to be able to tell us that, right?

Mr. Renaud: Let me explain. The list we have right now is the priority of the collector roads or other roads that is most used by the residents and that is how we have it right now.

Ms. Yukimura: I know.

Mr. Renaud: We also look at life of that road, so this is a...

Ms. Yukimura: I know, but see...

Mr. Renaud: Let me finish, please. This is how we make the list out, and then we are going to do the forecast and everything. I can do all of that, but I do not know where the money is coming from. This is where Larry is going to help me with the moneys.

Ms. Yukimura: Well, the Administration has the responsibility for bringing forth a proposal for solving this problem.

Mr. Dill: If I may, we will come forward to you with that. It may not be by April.

Ms. Yukimura: Yes, I hear you say that.

Chair Furfaro: But I did not accept that, JoAnn. You are revisiting what my expectations are.

Ms. Yukimura: I understand.

Chair Furfaro: You asked Ed a question and he still never gave you a date of when you can expect certain pieces to be done.

Ms. Yukimura: Yes...

Mr. Renaud: Can I say something? It is only me and one other person doing this. That is it. Please understand that we are doing this... I am not grumbling; I am just letting you know on the floor.

Chair Furfaro: Ed, I understand, but do you know what I do not understand? You never gave us a date.

Mr. Renaud: How can I give you a date— the date is December 2014, partial. That is what we said. That is my date. It is in here.

Chair Furfaro: We will put it down.

Ms. Yukimura: I understand that you need the data before you can come up with a plan.

Mr. Renaud: That is right.

Ms. Yukimura: That is why I was querying you about when the data would be pretty much firmed up. I wanted to know, taking that data with the Administration, then develop a plan to address the problem. You are saying “yes.” I know the Chair has said by April, but if you do not have the data then you may have to have it... can we expect that by next budget? You can see why I wanted to defer the vehicle weight tax and those kinds of things because people want to know what they are going to get for their money if we raised it. If they can see that paying now will begin to reduce our bills into the future— right now, we are pushing these costs of our use of the roads on our children. That is what we are doing right now and that is irresponsible in my opinion. As one Councilmember, I stand ready to work with you to figure out how to do the revenues, but I cannot do it without a good plan and that is what I am looking forward for. Thank you.

Chair Furfaro: Before we wrap this up, I want to make sure Larry understands that I am expecting a ten (10) year plan, a draft of one. I do not want to know all of the particulars, but I want to have a scope of what we are talking about. I need something tangible here after two (2) years. I think that is fair to ask for it, especially when we are in the budget cycle. If you are going to tell me that over a three (3) year period that sixty million dollars (\$60,000,000) might have to come from grants and bond money, and we are going to have to identify when these bridges are going to be done, then that is what it is. If some other revenue sources we have to look at is increases in the gas tax, two cents (\$0.02) and four cents (\$0.04), tell us what it is. We have to have a tangible plan. The band aid box does work anymore on the shelves. I think that is what I am looking for. We cannot come up with this simple idea of sources for this money... maybe we have to do some consulting work with other people doing the plan for us, but without a plan, we are going nowhere. It is just repetitive.

Mr. Hooser: I just have a brief question. Thank you for being here and I know it is an issue that has been going on for a long, long time. Even after this discussion, it seems like we are making a lot of progress so I thank you for doing that. My question is budget-related. I do not expect to get into an extensive discussion about it. Can you tell me approximately how much of this will be paid for or is being paid for with property taxes?

Mr. Dill: Currently, the Islandwide Resurfacing has been paid for with fuel tax money. That is how the Highway Fund is funded. I will

put a little asterisk on that because when we recently came to Council and requested and received your approval for funding the three (3) collector roads, we combined some moneys from a separate line item called, "Resurfacing Various Collector Roads." I believe that was funded by General Fund moneys.

Mr. Hooser: In round numbers, the amount of money...

Mr. Dill: But the vast majority is fuel tax in the past.

Mr. Hooser: Okay. The same with paying any bond would pretty much come out of the fuel tax as well?

Mr. Dill: Paying for bond?

Mr. Hooser: Yes, for borrowed money.

Mr. Dill: The debt service on...

Mr. Hooser: Yes. That would also come out the fuel tax?

Mr. Dill: I want to defer to the Director of Finance to answer that question.

Mr. Hooser: Okay. Other than that, pretty much everything is fuel tax?

Mr. Dill: Correct.

Mr. Hooser: Okay. Thank you.

Chair Furfaro: Larry, basically our bond that we deal with is "General Obligation Bonds." General Obligation Bonds mean that it comes out of any source of revenue that we have. If we have revenue bonds, then they are earmarked for specific revenue. To answer Mr. Hooser and for your awareness, all of our bonds are General Obligation Bonds. Mr. Kagawa, you have the floor.

Mr. Kagawa: Is it possible during budget that we come up with that prioritized list of dire need, high priority repaving roads? Can we have it where at least maybe every district has one? We will hit the high priority in each district such as the Puhi Road. To me, that is in dire need of repaving. The road I mentioned by Kīlauea service station is in dire need. You guys may even have more dire need roads, but if we can have that list of immediate ones, I think it would be really helpful because the Council wants to make sure that we benefit every community. I think we are very fair at this County because there is not one community that is all good. It is similarly bad all over and the catch-up is kind of equally distributed. Is that possible to have some kind of list that tells us which of the roads are immediate and we can make those a priority?

Mr. Dill: My understanding is that typically in the past, we have come to Council not during budget with our list for approval for Islandwide Resurfacing. That has been part of the budget discussion *per se* in the past, but having said that, it would be our goal to have a prioritized list to you at budget time of the roads that we have proposed for resurfacing. In the past, and correct me if I am wrong, but I do not believe that Public Works has presented the

Islandwide Resurfacing list as part of the budget discussion. That had not been really our firm goal to do that at that time. It is our goal and I have informed Ed and Roads crew that as the Chair has mentioned, this year we have a good pot of money thanks to the Council for our resurfacing projects and it is our intent to get that out on the streets as soon as humanly possible after we get that appropriation from Council.

Mr. Kagawa: I am not saying that we have to evaluate the entire island because we do not have the moneys to repave all of the dire need roads of the island in one (1) year. What I am saying is that highly used roads like Puhi Road should not be neglected any longer. If we can come up with some estimates for these really important roads like the Kilauea one that is just used by so much traffic every day. If we can come up with that cost for those really bad ones that we can address, then I think the community will really appreciate that it is not our standard to attack certain important roads. Maybe that is the way we have to go if we want to address needs quicker or what have you that we get that approval in budget and let us go forward. Thank you.

Chair Furfaro: I want to answer your question, Larry, and I want to make sure we understand it. It is when it should be done at budget because the money collected for gas tax is forecasted in road resurfacing. The debt service of paying a bond, the amount we pay the debt on, is in the budget when we borrow money. You see that the debt service there is paid back from the bonds and if the bond is for roads and bridges, then it should be discussed at budget especially the kind of numbers that we are talking about for this plan to succeed. I am only asking for a ten (10) year plan. The Council's main function here is reviewing the budget and we are talking about those kinds of dollars. Two and a half (2.5) years ago, it was in the middle of the year that we gave you one million dollars (\$1,000,000) more for roads, but it should be planned in budget. That is my feeling because that is where those expenses actually show up. Gentlemen, I want to compliment you even though you are probably surprised that I am complimenting you on the schedule of needs, but I think the piece that I am looking for is where the money is going to come from in round numbers, Larry. I do not want all of this detail, but where it might be in a plan. Thank you very much. Ed, thank you so much too. Is there any testimony? Why am I not surprised?

Mr. Mickens: Thank you, Jay. You should not be surprised because it has been going on for about fifteen (15) years. First I want to compliment Larry and Ed for at least delving into this issue. We have gone through Cesar, Donald, and now Larry. If we can get some coordination between what went on, it would not be so bad. But Larry's job is going to be unbelievable because there is no record of what happened with the repaving of our roads in the past. There should have been, obviously, but there was not. Now what? We are going to have to drill core holes in three hundred (300) miles of our roads to find out. Until all core samples are drilled, how are we going to find out what price? We are putting a one hundred million dollar (\$100,000,000) price on this for reconstruction. How are we going to put a price and resurfacing? How are we going to put a price on that reconstruction or resurfacing until we drill those core holes? We are speculating. If you have past record of this, I think you could find out, but we do not. Resurfacing— again, you cannot just go ahead and keep resurfacing until the core holes are drilled and we find out whether the base is right because if that base is wrong, you are going to keep on doing the same thing. There are going to be potholes in it. I can show you road after road, after road. As Ross has pointed out, there are so many roads on this island... about three hundred (300) miles of road.

JoAnn is asking about the highways. That is another system in itself. You see this cement dumped in these potholes on the highways. It is terrible; it is horrible. I guess it all comes down to budget again. In this financial report under the Highway Fund, I do not quite understand this financial report because I went over a few of the accounts in it and there is like five hundred (500) pages, so I only picked out a few and they had the estimated revenue and the actual revenue in that thing. The actual revenue always came out below what the estimated revenue was. I cannot figure out how they come up with that figure. In the Highway Fund, it said that seventeen million five hundred thousand dollars (\$17,500,000) appropriated; five million three hundred thousand dollars (\$5,300,000) spent; and two million two hundred thousand dollars (\$2,200,000) encumbered, which I guess "encumbered" means "you cannot touch it anyway because it will be spent." Why have we not used about ten million dollars (\$10,000,000) in that fund if it is sitting there? I think this was in the 2013-2014 budget time. I do not understand these figures. Again, it is a monumental job that Ed and Larry have got to be able to figure this out because say you got the money— again, as Jay pointed out, a couple of years ago in the resurfacing program, you found another one million dollars (\$1,000,000) or two million dollars (\$2,000,000), but you keep talking about a ten (10) year plan. As Tim or somebody pointed out, it will be one hundred (100) years and we are never going to be able to catch up. Does it come from the bond? Does it come from home taxes? It has to come from someplace to be able to do this, but we have neglected things for so long. Instead of doing it properly the first time, this would not be happening but you cannot go back and say, "Well, why did Cesar not or somebody in the past do this?" Anyway, maybe Larry can answer this question that is it not true what I am asking; do we not have to go ahead and get the core holes drilled and now that is not going to be done for... what is the date? December?

Chair Furfaro:

December 2014.

Mr. Mickens: In December of 2014, you are going to come back with a record of what we drilled. Now we are going to come up with another figure other than this one hundred million dollars (\$100,000,000). Anyway, maybe Larry can answer that. I appreciate it. Thank you, Jay.

Chair Furfaro:  
Mr. Bynum.

Glenn, there is a question for you from

Mr. Bynum: Glenn, I want to thank you for your advocacy about roads for all of these years. We are headed in the right direction. Do you agree with that?

Mr. Mickens:

Yes.

Mr. Bynum: Okay. We just have the preliminary outline that we are one hundred million dollars (\$100,000,000) behind on what repair and maintenance should have done, right? In a perfect world, you would only be a couple of million behind because you would be having adequate resources. Is this an area— again, I asked this question earlier, but if you were a Councilmember, would you vote additional funds to address this issue?

Mr. Mickens: As you know, the taxpayers are being so burdened with this new weight tax et cetera and people are sitting here, watching this thing and saying, "Are they going to tax us some more?" We are talking about

a gas tax. Money has been ciphered out of the gas tax and going to other purposes except the roads.

Mr. Bynum: Is the answer “no” then? So do not put any additional money into roads because we do not want to raise taxes? Is that your answer?

Mr. Mickens: Well, unless it comes from the State, the bonds, or something, but...

Mr. Bynum: Bonds is just money you borrowed.

Mr. Mickens: Well, that is true because it has to be paid back; it is not free money.

Mr. Bynum: I did not hear answer, Glenn. Would you want additional funds to address this road issue? Would you vote for them?

Mr. Mickens: The money has to come from somewhere.

Mr. Bynum: On February 12, this Council received the vehicle weight tax proposal. Did you testify on that? I was not here.

Mr. Mickens: Yes, I did.

Mr. Bynum: Were you opposed or supporting that tax?

Mr. Mickens: I was opposed to the weight tax.

Mr. Bynum: Thank you. I do not have any other questions.

Chair Furfaro: Is there any other questions for Glenn? If not, thank you, Glenn. Is there anyone else who wants to testify?

JOE ROSA: Good morning, members of Council. For the record, Joe Rosa. Again, I am hearing things of reconstruction and resurfacing. A lot of the things of this old County road system is way back and taking core samples like they say— a lot of those homestead roads... I checked when Mr. Glenn Mickens came to seek my expertise on roadways and paving, a lot of those roads up there were just twelve (12) feet wide. The County is trying to bring it up to standard and went and paved asphalt over no base, which is nothing. In the end, you got nothing; just spent money foolishly. You cannot put asphalt on soil. You have to have a base of some kind. It is simple as that. Maybe if JoAnn goes online, she can learn a little bit more about asphalt paving and stuff, like anything else. Some of the questions she asks— I say to myself, “This is nothing to do with paving. She is way out of base.” Leave the construction to the highway, to the engineers that we have here and let those engineers go and work with (inaudible), standard oil company, and people that do and handle paving materials with construction paving, which I attended seminars in Honolulu to learn my job and to do the job right. It was not an easy thing. It is experience that counts. That is why paper and diplomas does not work until you have the experience and the “know-how” of doing the work properly. You can take one hundred (100) test core (inaudible) along the County highways and I am pretty sure that a lot of them would just crumble after the two

(2) or four (4) inch of asphalt treated base. The rest is old time penetration and it will just crumble. The base course is null; it is dead. You will have to start from the bottom. That is why the gasoline tax... the people pay— that money should be for new highway construction or reconstruction and resurfacing; not be put in the till and the County keeps putting their hands in the till and taking money from the Highway Fund. Those are the problems that this County is enduring that cause these kinds of problems. A good example is the bike path. It has not served the purpose and rationale that Doug Haigh came here and that said it would take traffic out of Kapa'a. Where is it? We are still choking with traffic in Kapa'a.

Chair Furfaro:

That is your time, Joe.

Mr. Rosa: Yes. So the thing is, look at it and get to the bottom of it. Do not just blame your engineering staff. It is lack of "know-how" and I do not see a template to show what your base cost is. Is it eighteen (18) inches untreated base? Six (6) inches treated base? Two (2) inch finish? There is no diagram, Jay. That is the kind of things you need to start out. If you can get things like that there, you can see if you are doing all of this. Thank you.

Chair Furfaro: Thank you, Joe. Is there anyone else who wishes to testify? If not, I will call this meeting back to order. Members, are there any further discussion?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: I asked my questions upfront and I did not want to make comments when the guys had questions, but I really want to talk about this issue. There is interplay between the Mayor, the Council, and the civil servants who run our government. The civil servants are often professionals like engineers. I do not believe that what I am about to say is true of any elected official that is currently serving in the County of Kaua'i; I mean that. I want to tell you the way it was in the past. These engineers get so much money. The politicians decide how much they get for roads. "Which roads are we going to repave?" The engineers say, "Well, that turkey has to get repaved and that one has not been done for thirty (30) years," because they know. But, "There is this community group over in Kapa'a that is really screaming that we better do that road, but we did that road fifteen (15) years ago." "How come it is so deteriorated?" "Well, when we did the road, we did not do the underlying pavement and did not dress the sides." "How come we did not dress the sides?" "Because that year, the Mayor and certain Councilmembers demanded that roads near their homes or friends' roads got repaved and we did not have enough money to properly repave. They demanded that we do "x" amount of streets, so we just paved it over and did not dress the sides of the road and did not do the underlying things." So these things keep building up and this turkey road never gets repaved because there are political considerations to meet. There is pressure from certain community groups and people who know certain people. I know this to be true because when I became a Councilmember, it was the norm; it was the system. People contacted me and said, "You have to help me get my road repaved." I said, "No, the decisions about that should be made by the engineers who know where the priority needs are. Politicians should not be involved in this." We are making that transition. This is all good news. Politicians are not making those decisions anymore. Just a few years ago, some of you know roads that got repaved and say, "Why did they pave that one?" Then you find out that there is a big development happening there. This is the way it used to be. Do you see how

excited our Road's guy Ed is? He is working in an environment where he is not getting those pressures anymore. He is working in an environment where he has a Mayor and a Council that supports on these MicroPAVER issues. They have moved at deliberate speed, doing the right thing, in my opinion. They are excited because for the first time in years, they can do their job unconstrained by political considerations. Can you see the excitement? Good job, Ed. Good job, Larry. Good job, Mayor. We are on the right track. Now I expect that ten (10) year plan, but I do not expect it this year. Your presentation was as clear as a bell. We are in the process of collecting this data because we could not trust the old data, right? Because the old data is garbage. Good for you that you realized that and addressed it. I think we will get a comprehensive report from you next year because you will have completed this transition and gotten this data and work done. This year, we expect a maintenance budget for everything. There is no money. Councilmembers today talked about how important these are and that they will address these issues. Mr. Mickens testified in the letter to the editor saying that we have to cut waste and fraud, but he also has been telling us to spend more money on his priorities. That is the way human beings are; we set our priorities. When a politician tells you, and I am quoting Gary Hooser, "There is no money," what they are saying is, "It is not my priority," because there is always money. It is about who pays the bill and how the money is spent? JoAnn said we are pushing these costs to our children— absolutely. It will take us years to get back on track because of the realities, but who is responsible for that? Certainly not these guys in Public Works who are finally being able to do their job the way they are supposed to. The people responsible are the political people that have made these decisions over the years. I am responsible. Right now, I am responsible. I take that responsibility. That is why I put a vehicle weight tax before us because I have been the Finance Chair for the last five (5) years and I know the constraints that we are in. I know that if we charge an extra eight dollars (\$8) or ten dollars (\$10) for passengers on their registration that we will get funds to start addressing this issue, our roads will improve, and our consumers will spend less money on repairs and on gasoline because well-paved roads save money. This is a celebration. Thank you, Larry Dill and Ed Renaud for getting on track, being excited, and taking this step-by-step. I am just thrilled. I was not here on February 12 when the Council received the user fees that would help start to address this problem. Can we start addressing the problem this year? No, we are not ready to make that wise decision. That is what these gentlemen just told us. Let us give them the time to make the wise decisions and let us deal with the issues that we have this year. I just think this is all good news. Thanks for letting me make these comments.

Chair Furfaro: Okay. What do our rules say? You can talk for ten (10) minutes. JoAnn, do you want the floor?

Ms. Yukimura: Yes. Thank you, Chair. I will not need ten (10) minutes. I too, want to say as I said initially that I am very pleased to get this report. We have waited a long time for the results, and while these results are tentative, it tells us that we are on the right track in terms of developing good data and moving towards a plan to rectify this horrible situation; where if we continue as is, we are going to be putting a horrendous bill into the laps of our children and grandchildren. I am pleased with the progress. I am not pleased that we do not yet have a plan, but I see that it is coming and I look forward to receiving it and working with the Administration on a plan that will help us dig ourselves out of this hole and provide well-working roads. As Councilmember Bynum mentioned, well-working roads save our residents', visitors', and businesses' money, so that is our responsibility and our goal.

Chair Furfaro:

Mr. Kagawa.

Mr. Kagawa: Thank you, Chair. Road resurfacing problems are not only unique to Kaua'i. If you recently went to O'ahu—Honolulu... right around Ward has horrible roads, side streets, and what have you; not just there. Road repaving for Counties are a huge problem. It is not only having a lack of money, but having those management decisions of how to do it properly... because if you do not do it properly, it will break down quickly again once it rains hard or what have you. I am glad, too, that we are doing it and trying to identify the right way to do all of the roads and which ones we can spend less on and get it done. I think it is terrific. I would like to say that if maybe management needs to consider taking core samples on those that they can project in the near future that will get done—I do not see the use of taking core samples of every single road because we do not have enough money in the next five (5) years or so to do every single road. How useful is that core sample twenty (20) years down the line if that is what when we are really going to do it? I would say that let us do what we can, but let us be sure that we get that priority list done first or something that prioritizes where we are headed in our road resurfacing in the next few years. I think we want to show the public that there is some improvement. Like that vehicle weight tax—I think Councilmembers who voted against the vehicle weight tax would be more than supportive of the vehicle weight tax if we were told, "If you approve this vehicle weight tax, you are going to see this road done or that road done." But it is not like that. We can approve any amount of tax, but is there going to be results? When the Administration comes and supports a bill and lays it out to the Councilmembers of what they are getting for approving that tax, I think it will be easier to bite. In the future, if the Administration can really work with sponsoring Councilmembers and give us that kind of data, then I think there will be more... for me, I would have an easier time approving it. I think roads are highly important. Having good roads is huge. There are certain roads that locals know where they have to avoid that pothole, so you have to either hug the middle line or go around. It is bad. If you hit a pothole at full speed, it is like a balloon; it will pop your tire. I have had that happen. Let us work together and try to get these really bad roads done as fast as you can. You guys are the experts and I trust your judgment, so you have my support in whatever improvements we have in the future with road resurfacing. Thank you, Chair.

Chair Furfaro:

Is there anyone else who wishes to speak?

Mr. Rapozo: Thank you, Mr. Chair. I would agree with Mr. Kagawa, especially regarding the vehicle weight tax. It is much like the Solid Waste tipping fee increase proposal that we really had no plan on how to use the money. This is not just an opportunity to raise funds, and then figure out how to use it later. I think the key, for me anyway, is that there has to be a plan attached to the request to raise fees and costs, period. There has got to be. I heard Mr. Kagawa mention Puhi Road—I cannot explain to my constituents anymore of why that road is not paved. It has been years and years, and years. There is relatively new development in that subdivision and there is an industrial area; that road is used. I do not know how to explain to them anymore. "Did someone piss off the Administration that they do not want to touch Puhi Road?" That is what they think because, in my mind, there is no rational explanation why Puhi Road should not be paved. That road is bad. In the defense of the roads crew, I have a lot of friends and family from O'ahu that come to Kaua'i and say, "Gosh, you guys have the best roads in the State," because I think overall we do. But on these key roads,

the main roads; the Kīlauea Road that Mr. Kagawa talked about and Puhi Road. Obviously, with all the amount of County traffic and the County employees that go through Puhi Road, whether it is to go do business at the industrial center— there is a State office building in the industrial center. You would know... you would think, anyway, that that road should be elevated at some point, but that road is horrible; it is really, really bad. I guess I am optimistic that this program will pay its rewards and dividends eventually. I think that this is a step in the right direction and we just have to be patient. I will say that when MicroPAVER first came to the Council, it came with some commitments as well. It also came with some expectations for me and I do not think we are where we need to be at yet, but I think once everything is in place, the public will definitely receive the benefit. There are some highly used roads on the island that I think needs to be addressed outside of... if that computer program does not list Puhi Road as a priority, something is wrong with that program. That is just how it is. There are some roads that we have to address on a case-by-case basis and that is definitely one of them. Thank you, Mr. Chair.

Chair Furfaro:

Vice Chair?

Mr. Chock: I wanted to echo the work that has been done. Thank you so much, Larry and Ed, for your commitment and continuous research into this. The only thing that I would like to say in terms of plans is that I wholeheartedly agree that is the next step and we have seen a lot of plans. We are full of plans everywhere and I think the only thing that I would like to consider is that the best laid out plan is only doable if we can truly implement it. I am hoping that is something that is seriously taken into consideration when presented. Thank you.

Chair Furfaro: Are there any more comments? If not, I want to just say that in my role in business, I interact with engineers a lot and I also interact with people who plan items that deal with the facts about normal repair and maintenance. This is a six (6) year capital plan for a hotel that I managed in Waikīkī and the operating plan at the time that is as big as the County of Kauaʻi's Operating Budget. Here is the County of Kauaʻi's Six (6) Year Plan and it is pretty much the same document. This document has to be run through our Planning Department for comments and so forth. Then these moneys come together and they come in front of the Council for approval as far as the financial accountability of the plan. I think if I am guilty of anything, I think I am guilty of being impatient. We need to get an idea of what our needs are and I think we are on the right track. If one of those ideas is that "Ed needs more help in his Department, even if it is contracted out to put the plan together," we need the detail that is missing in the County's plan. If you go to a hotel plan and you turn back, it then has all of the detail for what you are doing with wastewater, water usage, plumbing, equipment, and replacing the roof. It is all in the most current year. The Charter also tells us, Councilmembers, that we cannot approve things in advance. The Charter tells us that the plan that we need to have gets submitted on CIP via the Planning Department. We do, in the year, for the year, give the Administration the other Departments the kinds of tools to put the detail together for these plans. I am hoping that when we get into the budget cycle, we can have at least a ten (10) year preview of how serious this problem is. We also have a ten (10) year preview that deals with "there are other moneys for us." If this money is only for repaving, that is one thing, but if this money also earmarks core drilling and so forth, the estimates can be put in a future plan. That is why it is called a "budget." That is why when you end the year, according to your plan, you no longer have a budget;

you have the actual spending, what we accomplished, and so forth. That is what we have got to get in balance. Larry, I am looking forward to anything that you can give us in the way of a preview of what the next ten (10) years might look like. This Council can only control the current year. The Council after Council needs to be relating to a plan and that is what I am hoping we can come up with. Anyway, on this item here, it is to receive. This was an agenda item that I put on. I only wanted to have the discussion to kind of identify what we wanted in the upcoming budget.

The motion to receive C 2014-71 for the record was then put, and unanimously carried.

Chair Furfaro: We are now going to take a caption break, and then go back to Housing.

There being no objections, the meeting recessed at 11:13 a.m.

The meeting reconvened at 11:28 a.m., and proceeded as follows:

Chair Furfaro: We are back from our recess. During the recess, I was approached by the legal department, who does want to have some discussion with the Council on the legal document which originally dealt with the Rice Camp Senior Housing Project. For that matter, it is on the agenda. We will take public testimony, but before we do, I want to call up Ian Jung and the Housing Director. Steve, you are welcomed to come up as well.

There being no objections, C 2014-75 was taken out of the order.

#### LEGAL DOCUMENT:

C 2014-75 Communication (02/28/2014) from the Housing Director, requesting Council approval to execute a Ground Lease with Rice Camp Partners, LP (RCP), for Rice Camp Senior Housing situated at Tax Map Key (TMK) Nos. (4) 3-6-009-001 and (4) 3-6-004-009 for a term of sixty-five (65) years for management and operation of the Rice Camp Senior Housing Project.

- Ground Lease

Mr. Bynum moved to approve C 2014-75, seconded by Mr. Rapozo.

Chair Furfaro: I do want to ask that get as current as we can on some recent information that was brought to my attention. I had a conference call this morning with our Managing Director about this question, but I understand that you are now prepared to answer us. On that note, Mr. Cobb-Adams, I will give you the floor and you can have the County Attorneys add whatever they want to add to these changes.

There being no objections, the rules were suspended.

KAMUELA COBB-ADAMS, Housing Director: Thank you, Chair and Councilmembers. Kamuela Cobb-Adams, Housing Director. We had this lease submitted to you folks on time and there was a small issue with language dealing with the Condominium Property Regime (CPR) versus a subdivision. Basically, the reason why the language was in there is because the developer was awarded the

rights to develop Rice Camp as a whole, which includes two (2) parcels. Phase 1 is on one parcel and part of the second parcel. In order to reserve the right for the development on Phase 2, there needed to be a CPR. Up until yesterday, we thought the CPR was the best way to go so in the lease, we had a condition for them to CPR the project, the lot out, so that it has different boundaries so that we could define for the investor where the boundaries are. Yesterday we got a call from the investor and they can probably give more information— not the investor, but the developer, saying that their investor— in their final due diligence, the tax attorneys and investors' attorneys were having some issues with the CPR and preferred subdivision language. I will let the developer explain it.

Chair Furfaro: Before we go to the developer, I do want to make sure that the original documents that came over to us did imply it was a two (2) lot CPR.

Mr. Cobb-Adams: Yes.

Chair Furfaro: Am I correct?

Mr. Cobb-Adams: Yes.

Chair Furfaro: What we are saying is that there has been some request to convert that into a two (2) lot subdivision?

Mr. Cobb-Adams: Yes. The language allows for CPR or subdivision.

Chair Furfaro: Now let me ask you, according to our Planning Code, has that parcel never been subdivided before? We have a one-time subdivision ruling here. I just want to get a quick confirmation that this has never been subdivided before.

IAN K. JUNG, Deputy County Attorney: I believe this is... is it R-6 zoning? Okay, general commercial R-20, so the one-time subdivision restriction would only apply to agricultural district land. I am sorry— Deputy County Attorney, Ian Jung for the record.

Chair Furfaro: Thank you for introducing yourself. We will have the developer come back. I just wanted to get that clear. Thank you for your patience and you need to address us by introducing yourself first.

MAKANI MAEVA, Director of Vitus Group for Hawai'i: Good morning, Chair and members of the Council. My name is Makani Maeva and I am the Director of Vitus Group where the affordable housing developer selected to develop the Rice Camp affordable housing project. I apologize for the last minute change, but as Kamuela has explained to you, we responded to an RFP to develop the entire parcel, which are two (2) parcels actually, for Rice Camp. We have put together a financing structure with your assistance and Housing's, and you have seen me here before. We put together the financing structure that will allow us to develop Phase 1, which includes sixty (60) units of affordable housing. We are trying to preserve the rights to do additional affordable housing units when the infrastructure is available. Our lease with the County is a lease for the entire two (2) parcels and our lease contemplated that in the future, we would consolidate the lots and put a CPR structure on so that we would be able to finance the vacant

portion in the future. We are just about ready to close the transaction and tax attorneys and real estate attorneys have gotten involved to prepare their final opinions. Given the condominium structure and the underlying lease structure, they are not confident that it gives them the tax control and ownership control that they need in order to qualify for tax credits under the financing structure. They are further concerned about ownership as it relates to any liabilities that Phase 1 may suffer as a result of something that would be built on Phase 2. For that reason, for example, they pointed out to me that if Phase 1 were to burn down under a condominium property structure, Phase 2 would be obligated to approve building permits for Phase 1. They are concerned about this overlap and what it may do to deteriorate the financing structure or limit their ability to give an opinion, so I would not come back to you with a last-minute structure. We really thought that the CPR would work. When push comes to shove and opinions... and with (inaudible) opinions, attorneys have said that a subdivision is really the way we need to get control of this land. Let us be clear; we will still have a long-term leasehold interest, so it will not deteriorate, in any way, the County's ownership of the parcel; it will just be subdivided subject to the leasehold. This will allow us to move forward with closing and start construction. Actually, we are going to go out and look and try to put up the tent, so if you would consider it. I apologize for the last-minute request.

Chair Furfaro:

Are there any questions?

Mr. Hooser: Good morning. In terms of the timing of the process, it is my understanding that the CPR process could be done much faster than a subdivision process and the County requirements for subdivision, I believe, might be greater than a CPR requirement. Can you address those issues?

Mr. Cobb-Adams: This happened yesterday, so we called a ton of meetings. I wanted to say thanks to Planning and the Attorney's Office who helped us resolve it yesterday. We met with Planning and basically, a lot of the conditions were done at the Class IV Zoning Permit; sidewalks and all of those types of things were addressed at that point. Actually, one of the conditions was to do a subdivision... for us to do a subdivision, so our understanding is that we will be able to do a subdivision rather quickly. The County actually owns land, so we would do the subdivision or authorize the developer to act on behalf of the County to subdivide it with our approval. We do not see anything being added significantly because the project is already going to be doing the requirements necessary for the subdivision. The ownership still stays with the County. We went through density issues to make sure that we still have the appropriate density on both parcels for subdividing it and it seems like it is going to work. We have vetted that.

Mr. Hooser:

Thank you.

Chair Furfaro:  
Mr. Rapozo.

Councilmember Yukimura, and then

Ms. Yukimura: With respect to subdivision, is there not a provision in the subdivision ordinance that allows pretty expedited subdivisions when they are for a government purpose?

Mr. Jung: It all depends on the context of the subdivision. In this particular case, it is a relatively minor subdivision action. Our subdivision code calls it a "subdivision" because it is basically a movement of lines.

If it is a consolation subdivision or ultimately what the result is going to be, a boundary adjustment. Because there are two (2) lots, you are going to address the boundary. It can be a relatively quick process, and as our Housing Director indicated, when they went through the entitlement process for the lot, the Project Development Use Permit, Class IV Zoning Permit, all triggered the necessary conditions for the development. If they do a boundary adjustment, then it will probably be relatively minor in terms of what the standard conditions would be. The infrastructure requirements—those are all lined out with the current project in the Project Development Use Permit.

Ms. Yukimura: Okay, so the action would be to consolidate and re-subdivide? That is what you will subsequently go for?

Ms. Maeva: That is correct.

Ms. Yukimura: In the process of doing that and going to a subdivision, have we assured ourselves that the County's interest is protected? That may be a question for Mr. Hall, who did the lease.

STEPHEN HALL, Deputy County Attorney: Good morning, Stephen Hall from the County Attorney's Office. Yes, the County's interests have been well-protected. As Makani was stating, this is a process that has been going on for several months and I, along with some of my counterparts in my Office, Kamuela, Gary Mackler, and a whole host of folks, have been going through and vetting the lease to make sure that the County does retain the proper interests and make sure that the underlying fee simple, which we have, never merges with the leasehold interests, which the developers will have, and making sure that mortgages do not ever touch our underlying interest; only the leasehold, which again, the developer will have. There has been a very long process of determining what our interests, what they need to remain as, and protecting those interests.

Ms. Yukimura: Okay. How many years is the leasehold term?

Mr. Hall: Sixty-five (65) years.

Ms. Yukimura: Okay. Is that for both parcels? Is it the master lease for both?

Mr. Hall: Sixty-five (65) years in total, correct.

Ms. Yukimura: Okay. Right now, Phase 1 is sixty (60) units, and then the plan later is, I guess... is there a timetable for a Phase 2 or based on need?

Mr. Cobb-Adams: The reason why it was phased sixty (60) and we had part on one parcel was basically water. Water was the biggest limiting factor, so we had existing meters as part of the reason why they were selected. They established that early on. They can do as much as sixty (60), which the Department of Water agreed to based on the current water allocation for this. We are working with the Department of Water and trying to establish more water source, but it is not under our control.

Ms. Yukimura: Okay. That is one of the obstacles to full development of the parcel, but we are going to move ahead with development that is supported by what we do have in terms of water and other resources. Thank you very much.

Chair Furfaro:

Mr. Rapozo, you have the floor.

Mr. Rapozo: Thank you for being here. When the subdivision needs (inaudible) to be done by the County, the County is going to be the applicant or maybe the developer through...

Mr. Cobb-Adams: We will have no problem going as joint applicants or we will do it.

Mr. Rapozo: I guess my point is that the Planning Commission would still have to approve the subdivision?

Mr. Cobb-Adams: Right.

Mr. Rapozo: That would not change.

Mr. Cobb-Adams: Yes.

Mr. Rapozo: In essence, this amendment creates more of an opportunity for the public to comment versus the CPR.

Mr. Cobb-Adams: That is true.

Mr. Rapozo: The CPR is done on paper.

Mr. Jung: You are correct. The CPR process is a process that goes through the real estate commission through the State Department of Commerce and Consumer Affairs (DCCA). The subdivision process goes through County subdivision protocols which require essentially two (2) hearings; not public hearings, but hearings under Sunshine Law hearings because it takes tentative and final subdivision, so more public comment will be available.

Mr. Rapozo: It does afford the community the opportunity to testify.

Mr. Jung: Correct.

Mr. Rapozo: I do not anticipate any opposition to this because of the use, but for me, it actually provides much more opportunity for the public with this amendment, going with a subdivision versus CPR. Obviously, I am going to support this because it does provide for more community involvement. If that will happen—I do not know. I probably do not think anyone would show up, but it just provides that opportunity.

Mr. Jung: It does.

Mr. Rapozo: Thank you.

Chair Furfaro: Since you are here, Mr. Jung, let me ask you a question. The intent for the Planning Department would be... this new subdivision application will be in front of the subdivision committee at the next schedule Planning Commission Meeting and subsequently, then will go to the full Planning Commission? Are you going to do it simultaneously on the same day?

Mr. Jung: It has happened on small, minor subdivisions where you can do tentative and final on the same day. Scheduling—I am not too sure what is happening with that. If it does, the process works where the subdivision committee will hold its meeting, and then if they take an action by the subdivision committee, then it would be referred to the full commission to ratify the act of the subdivision committee. It would take that subsequent action by the commission.

Chair Furfaro: Just to clarify Mr. Rapozo, it could in fact, be posted for the committee, and then to the full Planning Commission on the same day?

Mr. Jung: Correct.

Chair Furfaro: They would have two opportunities to give testimony, but the testimony would happen on the same day?

Mr. Jung: Correct.

Chair Furfaro: Are there any other questions at this point?

Ms. Yukimura: You would like to see this amended lease approved today so that you can continue on your timetable? From your perspective, “time is of the essence” at this point?

Mr. Cobb-Adams: Yes.

Ms. Yukimura: Please speak your answers.

Ms. Maeva: Yes.

Mr. Cobb-Adams: Yes. We want to close next week.

Ms. Yukimura: Okay. Thank you.

Chair Furfaro: Vice Chair.

Mr. Chock: Just to clarify, this still remains a Ground Lease ultimately. Is that true?

Mr. Cobb-Adams: Yes.

Mr. Chock: Okay.

Chair Furfaro: Mr. Kagawa.

Mr. Kagawa: If everybody is done, I will make the motion to amend as circulated.

Chair Furfaro: We will have to take public testimony, but is there a formal typed out amendment that the Housing Department has submitted to us? Yes, okay. This is what is circulating.

Mr. Kagawa moved to amend C 2014-75 as circulated and to authorize the County Clerk to sign the amended lease when all the other parties have approved the said document, seconded by Mr. Rapozo.

Mr. Cobb-Adams: Thank you very much.

Ms. Maeva: Yes, thank you very much.

Mr. Cobb-Adams: I am sorry...

Ms. Maeva: Yes, I am sorry, too.

Ms. Yukimura: We still need to take public testimony and we have not voted yet.

Ms. Maeva: Okay. Thank you for this part.

Ms. Yukimura: You are welcome.

Chair Furfaro: Is there anybody in the crowd that would like to give testimony?

KEN TAYLOR: Chair and members of Council, my name is Ken Taylor. It is nice that affordable housing projects for Lihū'e is moving forward, but as I said in previous testimonies that I thought we were missing an opportunity to "densify" this particular site. At that time, I was told after testimony that there was a water problem and we could not build it all, but it does not make any difference whether you cannot build the project as it is designed or you cannot build the project because it is twice as big as it is, currently designed. The water issue is not the criteria for making a decision on moving forward with affordable housing that really, by "densifying" this site becomes a major player in what was sometime back in the Lihū'e Core Plan. It is very important to make that core plan work... is to have the density in the area. We are missing an opportunity and as important as it is to move this project forward, it does not make any sense to hurry up and build something and lose the opportunity to have more affordable housing in the immediate area. Thank you.

Chair Furfaro: Thank you, Ken. Are there any questions for Ken? If not, Joe, you may come up.

Mr. Rosa: Good morning. For the record, Joe Rosa. Again, I am for the development because we need it and there are people that need housing. The problem is the issue of complete streets or roadways. If the developer is going to comply with the County Ordinance of going into complete roadways, I hope they have a forty (40) feet wide road, twenty (20) feet for the cars, and ten/ten (10/10) for parking on the sides because people will be living in homes there and if you want to go visit somebody who is ill, you are going to park in a roadway that is twenty (20) feet wide— you are going to have a problem with your fire and ambulance services like they do with the Lihū'e Town Estates. I went in there one

night and this ambulance service (inaudible) out of the cul-de-sac. Those are things that they have to look into. You want to go first class; make it a first class roadway that connected that area there— forty (40) feet wide roads, twenty (20) feet for the vehicles, and ten/ten (10/10) for parking for visitors. I have seen it in Līhu'e Town Estates and even back here in Molokoa; the new phase there. If they have parties or something, there is not much parking. They cannot all park in the people's yards. They can park along the highway, if you have ten (10) feet parking (inaudible) on each side of the roadway. Make the main thoroughfare going into the development there a forty (40) feet wide road so that you can have things like that there and not encounter problems like they have in the Līhu'e Town Estates. I remember when Kaipō was here. They even thought about putting a shuttle bus from Līhu'e stadium into Līhu'e Town Estates because of the parking. Think about it. Now is the chance. Get those developers— they are going to make money, but let them put in the things that are needed when it comes to vehicle safety like fire and ambulance services like that there. I have seen it; I have been around. I do not know— maybe you have not heard about it yet, but I know I testified against the Līhu'e Town Estates because I have seen it happen also because it is not wide enough for the big fire trucks or the ambulances services going in and out and competing with the people who live there and park cars there. They are in the business to make money. The more space and they can put more units, fine; but think about the congestion that can cause for public services like fire and ambulance services... forty (40) feet wide roads. Make it a standard thing because that way your emergency vehicles can get in and out. Think about it now. You have the chance before everything and the plans are final, so have them put that in the plans that they have— a forty (40) feet wide road with sidewalks and curbs gutters like how they want the complete streets in the subdivisions and roads here on Kaua'i. I will leave you with that thought. Thank you.

Chair Furfaro: Thank you, Joe. Is there anyone else who wants to testify? If not, I will call the meeting back to order and recognize Mr. Kagawa.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Kagawa: Thank you, Chair. I will be supporting this item and I would like to thank Makani and Kamuela. I see it as a great project. Līhu'e is a very desirable area to live and it is very easy for our seniors who no longer can drive to get around and be self-sufficient. My hope is that when the project is completed, there will be many seniors that will be happy and will take advantage of living there. Thank you for your work. Kamuela, special thanks to you. During the planning process, we had some concerns from some residents and businesses also that brought up to me and you immediately called them and settled some of their concerns directly. I want to thank you for that, Kamuela. *Mahalo* for the time, Chair.

Chair Furfaro: Mr. Bynum.

Mr. Bynum: Yes, I am definitely supporting this and I appreciate the timely action. I am glad that we can deal with it today. Kamuela has done an outstanding job as Housing Director since he has been here and I want to acknowledge Gary Mackler who is traveling, who has been here many years. Kamuela and Mr. Mackler have really gotten to be a dynamic team in the time you have been here and I very much appreciate it. This is really good news for the

County that we are doing these senior housing projects right here in Līhu'e. Thank you for your good efforts.

Ms. Yukimura: Chair, I would like us to vote on the amendment.

Chair Furfaro: Okay. We have the amendment that was introduced by Mr. Kagawa and seconded by Mr. Rapozo. Is there any discussion before I call for the vote on the amendment? If not, may I have the vote?

The motion to amend C 2014-75 as circulated and to authorize the County Clerk to sign the amended lease when all the other parties have approved the said document, as shown in the Floor Amendment which is attached hereto as Attachment 1 was then put, and unanimously carried.

Chair Furfaro: Now we are going to the main motion as amended. We are still having discussion. JoAnn, you have the floor.

Ms. Yukimura: I, too, want to say thank you to both the Housing Agency under Kamuela's leadership; to the developer, Makani and Vitus; and to the County Attorney's Office, Steven and Ian, for the work on this. This is a very important project. It really is aligned with the Līhu'e Town Core Plan. It is increased density. Although, I see that it is sixty (60) per four acres... sixty (60) units on four (4) acres, if I read the documents correctly so that is R-15, which we have very few developments that are that dense other than hotel rooms. Certainly, elderly housing is greatly needed and even will be needed into the future even more with the aging of our population. Affordability is so critical on this island for people to be able to live with some quality of life here. This project is very, very important and it has moved with great speed thanks to the good work with all those involved. I look forward to both groundbreaking and for a finished product soon.

Chair Furfaro: Are there any further comments? If not, I want to say that I am very pleased with this project. I think both speakers that came from the public brought up some good points to be discussed as we go to the General Plan Update, but I also want to say that between the developer, the finance and bankers, and the Counties; we must have had a dozen lawyers look at this. Housing—they have to work a little quicker and raise questions a little earlier. I do not like to do these things on the day that we are dealing with, which I think is a substantial change, whether we are getting into a partnership with a CPR or subdivision. Please note my concern on that, but I will be voting for it. On that note, I will call for a roll call vote, please.

The motion to approve C 2014-75, as amended, was then put, and carried by the following vote:

FOR APPROVAL:	Bynum, Chock, Hooser, Kagawa, Rapozo,	
	Yukimura, Furfaro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Thank you very much and congratulations. I see that the Finance Director is back with us. Can we take up those Finance items?

Before we go to lunch, I want to defer one Executive Session item. Can you take us to the right page number and we will go through the Finance items?

COMMUNICATIONS:

C 2014-72 Communication (02/20/2014) from the Deputy Director of Finance, transmitting for Council information, the 2014 Real Property Assessment List of the County of Kaua'i. (*2014 Real Property Assessment List on file in the County Clerk's Office.*): Mr. Rapozo moved to receive C 2014-72 for the record, seconded by Ms. Yukimura.

Chair Furfaro: Steve, do you have any commentary on this item?

There being no objections, the rules were suspended.

STEVEN A. HUNT, Director of Finance: Steve Hunt, Director of Finance. In accordance with our requirements, we are submitting to you for review of the Assessment List for the Fiscal Year 2015, the 2014 tax year. Included in that is the evaluations and estimate of taxes based on the current tax rates, as well as the credits with the new Home Preservation Limit.

Chair Furfaro: Is there any questions for the Director of Finance as to what has been submitted? If not, I am going to ask to take testimony on all three of your items, but let us go through this. Let us go the next item, please.

C 2014-73 Communication (02/27/2014) from the Director of Finance, transmitting for Council information, supplemental property tax revenue information pertaining to the estimated reduction in real property tax revenues resulting from the Home Preservation Limit tax relief measure enacted by the Kaua'i County Council, based on the Real Property Assessment Certification for Fiscal Year 2015 factored with the existing real property tax rates: Mr. Bynum moved to receive C 2014-73 for the record, seconded by Mr. Chock.

Chair Furfaro: Do you have commentary for us on this?

Mr. Hunt: Again, this is the new Home Preservation Limit, which is new for the current Fiscal Year. This is one of the programs that were used to supplant the former program, which was the Permanent Home Use Cap. As the exemptions increased to offset most of that, we were concerned about some of the outliers. As you can see from the report, there were only three that had applied and were qualified, but the amount of that relief is fairly substantial, almost ten thousand dollars (\$10,000) if you average the three.

Chair Furfaro: Are there any questions for Mr. Hunt? Yes, go ahead.

Mr. Chock: I just have one question. Steve, when I look at the table under "Hotel/Resort and Tax Amount of Appeal," I noticed that it is a large amount. Is there an explanation to the six hundred thirty-eight thousand dollars (\$638,000) as opposed to the other classes?

Mr. Hunt: Typically when hotels appeal, they are large value for each appeal. If you are talking a two hundred million dollar (\$200,000,000) that the owners think is worth one hundred fifty million dollars (\$150,000,000), that one appeal may be a fifty million dollar (\$50,000,000) appeal. Typically, the dollar amounts in those appeals tend to be larger than a smaller home, which does not have as much dispute in count.

Mr. Chock: Thank you.

Mr. Hunt: You are welcome.

Chair Furfaro: Are there any other questions? Go ahead,  
Mr. Hooser.

Mr. Hooser: I have a brief follow-up on the appeal. The vast majority of that is represented by visitor by hotels? Is this consistent with last year or is it more or less approximately?

Mr. Hunt: Councilmember Hooser, in comparison to last year, the amount in dispute in tax dollars was four hundred thirty-five thousand dollars (\$435,000) and this year it is six hundred thirty-eight thousand dollars (\$638,000), so it is an increase and values have increased as well.

Mr. Hooser: Majority of those are hotel properties?

Mr. Hunt: All of them are in the Resort category, but there are timeshares and other resort vacant land that fall within that category. The hotels themselves—I do not know off the cuff, but I believe that the majority of the value is probably in two or three of those appeals.

Mr. Hooser: Thank you.

Chair Furfaro: Steve, can you tell us how much the gross values increased?

Mr. Hunt: In totality, the gross values of all classes increased by...

Chair Furfaro: I just want to know Resort.

Mr. Hunt: The Resort—two hundred three million nine hundred thousand dollars (\$203,900,000).

Chair Furfaro: That was the increase year-to-year?

Mr. Hunt: In value.

Chair Furfaro: Okay. I am just pointing out that the State reevaluated their forecast of for next year as being flat, but we had a two hundred million dollar (\$200,000,000) increase in assessments.

Mr. Hunt: In that category, yes. In total, about one billion one hundred seventeen million dollars (\$1,170,000,000) in gross value, but

less the exemptions, the total was only about three hundred thirteen million dollars (\$213,000,000) in net value.

Chair Furfaro: Thank you for that. I said three items, but I think the next item is quite a bit different from these two, so I will ask you to step aside so I can take public comment on these first two items, and then we will vote. If you could just give us a few minutes and sit on the side, I would appreciate it.

Mr. Hunt: Thank you, Chair.

Chair Furfaro: Is there anyone who wants to testify on items C 2014-72 and C 2014-73? These are reports that are required by Charter, but this is to only note that we received the item. Is there anyone in the public who wants to testify on this? If not, I will call the meeting back to order. Are there any comments from the Councilmembers?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: I just want to thank the Finance Chair for being available and answering these questions. The valuations are up in terms of assessed value. That only turns into tax dollars when we set rates. If we keep the rates the same, then taxes will go up because it is value times rate. The Mayor will propose rates and the Council will determine if they are appropriate or not. I just wanted to say that the increased valuation does not automatically translate into increased revenue because our tax ordinance requires the Council, each year, to set the rates and determine and make a conscious decision, "Do we want these assessed values to lead to increased taxes or do we want to adjust the rate accordingly?" I thought we were making comments, but you came up, Steve. Did you want to say something?

Chair Furfaro: I called the meeting back to order.

Mr. Bynum: Okay. This is also the year, as is pointed out in these items, that the Permanent Home Use Cap has been removed and that will lead to taxes being much fairer than they have been in the past. I appreciate the Administration's and the Council's decision to do that. It means that this year, if we do not adjust the Homeowners Property Tax Rate, there are going to be somewhere in the neighborhood of four thousand (4,000) to five thousand (5,000) individuals who will see a tax increase next year. There will be a greater number somewhere around five thousand (5,000) or six thousand (6,000) that will receive a reduction in taxes. This is if the Council does not change the rate and that is because we brought equity or fairness back to the system. Those individuals who will see a tax increase next year, that amount will be dependent on the Council setting the rates. For those of you residents who do perhaps receive a tax increase, those are the same residents who had the lion's share of the benefit from the Permanent Home Use Cap. Those residents who see an increase this year are the ones who have been paying reduced taxes much less than some of their neighbors. The people who get decreases are those who have been paying much higher of taxes for the same valued home. This brings fairness, but because we did not reduce the tax rate for people, it makes it fair and that is important. How many people get a tax increase and how great that tax increase is is dependent on this Council setting the rates for those classes. Those are my comments and I appreciate that these reports are coming in a timely manner. Thank you.

Chair Furfaro:

Mr. Kagawa.

Mr. Kagawa: Thank you, Chair. Coming up in the budget, we are facing a tough budget. We either have to raise revenues to keep up with our spending or we are going to have to cut expenses, which is tough. But I am confident, Steve— and I think we have the perfect choice in you as the Finance Director heading into these tough years because you have that experience with the Real Property Tax Division and that is going to be the area if we go with getting more revenue; that is the area where we are going to have to do it. That is why I am really happy that you are leading our Finance Department. I think the Council is going to set the tone of whether we are going cut or we are going to add. I do not want to say that everybody is happy with our tax restructure. The homeowners who are getting the home exemption are really happy and they just own one home, but there are a lot of people out there that are not rich people that have two properties. They are getting a good break on their home and they are just getting slammed on their other property. Sometimes, it is inherited property that they are saving for their kids and maybe hesitant to give it to their kids at moment because they do not trust them or what have you, but it is tough. I do tax returns for friends and family, and I see that second tax bill and I think to myself, “How are you surviving?” Because I know that they do not make a ton of money. Finding that equity—I am not going say that our system we have is “bad.” Like I say, if you own one home, we have a great structure and that has reduced some of our bills a lot. For multiple-property owners, some of them are really getting killed and you guys hear it every day at the Real Property Tax Division. There is still room for improvement as far as how to help all of our residents who do not make a ton of money. Thank you.

Chair Furfaro: Are there any further comments? If not, Steve, you can stay right there because you are coming back.

The motion to receive C 2014-72 for the record was then put, and unanimously carried.

The motion to receive C 2014-73 for the record was then put, and unanimously carried.

Chair Furfaro: Let us go to the third Finance item, please.

C 2014-74 Communication (02/26/2014) from the Director of Finance, transmitting for Council information, the Period 7 Financial Report – Detailed Budget Report, Statement of Revenues (Estimated and Actual), Statement of Expenditures and Encumbrances, and Revenue Report as of January 31, 2014, pursuant to Section 21 of Ordinance No. B-2013-753, relating to the Operating Budget of the County of Kauaʻi for Fiscal Year 2014. (*Copies of the Period 7 Financial Reports as of January 31, 2014 on file in the County Clerk’s Office.*): Ms. Yukimura moved to receive C 2014-74 for the record, seconded by Mr. Bynum.

Chair Furfaro: Is there any discussion from you, Mr. Hunt?

There being no objections, the rules were suspended.

Mr. Hunt: I have no discussion on Period 7. I just wanted to note for the record that the second quarter executive summary is *en*

*route*, so you will have the first six (6) periods in a summary format that will be easier to read and just a look at the variances. That should be *en route* today or tomorrow.

Ms. Yukimura:

Thank you.

Chair Furfaro: This is in compliance to the discussion that we had of having this more simplified piece for the Council. It is *en route*. It is much appreciated. Let me ask you, as we look at Period 6 and as we even look at Period 7, has the Finance Department taken any measures? Although we have outstanding projects, have you taken any measures to show any accruals of those expenses that may not have been final, but are anticipated? That was a personal request of myself.

Mr. Hunt: Yes. We are looking at adjusting for seasonality because right now, the revenues are all coming in primarily in two periods and that really does not give you an accurate reflection on the variances. Because we had some challenges with the integration of the budget and accounting systems, we were able to retain the year-to-date figures, but the individual periods... we are getting skewed and we were having challenges so we are working with our vendor, SunGard, for a solution for Fiscal Year 2015 that we would incorporate those variances, so when you see those reports, they should be meaningful as to anticipated revenues during those periods as opposed to accrued over the full year.

Chair Furfaro: I want you to know that behalf of myself, that is very much appreciated. It is very difficult to see all the adjustments in Period 12 when it is too late to do anything about, so I want to personally thank for continuing to look at any potential accruals that can give us a more meaningful mid-year/third quarter review. Thank you very much. Are there any other questions for Steve before I ask for public testimony? If not, can I ask you to step aside again, Steve? Does anyone want to speak on the Period 7 Financials at this point? Come right up, Glenn.

Mr. Mickens: Thank you, Jay. For the record, Glenn Mickens. I just have a question, Jay. You can probably answer it for me. Looking at a few of these accounts in that five hundred (500) page report that is on the web... I just glanced through a few of them, but why are the actual revenues always so far off from the estimated revenues? They come out on the negative side continually. In other words, you have an estimated revenue that you are projected you are going to have and all of a sudden, it is far, far less than that. How are these things always so far off?

Chair Furfaro: Well, I will give you one example. We do have revenues that come from other sources. One I will point out is the Transient Accommodations Tax where we anticipated in six (6) month increments paid to us by the State, but the State obviously lags their payment for somehow managing their cash flow. That would be a major one because that number is close to for the year, about thirteen million dollars (\$13,000,000), so that is just an example, Glenn. It is not that people are... they are delinquent on the timing as we put in the budget, but they are aging their payments to us on the due dates.

Mr. Mickens: Right. Like in the golf estimate, it was one million three hundred thousand dollars (\$1,300,000) and the actual amount was

four hundred ninety-two thousand dollars (\$492,000). That is a seven hundred seventy-seven thousand dollar (\$777,000) difference and the estimate was not even close to what the actual was. Who makes the estimate then? Does Council get the estimate?

Chair Furfaro: We agree on the budget sheet accordingly that deals with the revenues from suppliers, vendors, rents, golf rounds, percentage of payment paid on by the concession for golf carts, and so forth. That is done by a reporting system by those vendors. Because you have mentioned it, and I do not have the five thousand (5,000) pages in front of me, I will take a personal look at it and I will get you an answer. I do not think that is quite correct, but I will verify it. You have just gotten two overviews of some of these delinquencies and I will ask Steve if he wants to talk about the Golf Fund.

Mr. Mickens: Okay. I went over about three or four them maybe, but like you said, all of those pages... and it just appeared that there were so many negatives coming out on one side of the ledger and I wondered whether we are just underestimating what it should be or more realistically looking at. Like you said, there are revenues coming in and maybe they have not been reported in time. I guess there is a reason. Thank you, Jay.

Chair Furfaro: Steve, may I ask you to come up to respond to that? Again, I have not seen the piece but you heard my response first of all on the TAT being delinquent, and then this question about golf. If there is anything you can add to that— I think I am correct on the TAT. If you want to respond on the golf...

Mr. Hunt: If I could speak to the golf, the annual budget for golf is one million two hundred sixty-nine thousand dollars (\$1,269,000) in revenue. The year-to-date, which we are only halfway through the year, is six hundred thirty-five thousand dollars (\$635,000) meaning that we are still trying to collect seven hundred seventy-seven thousand dollars (\$777,000) roughly...

Chair Furfaro: From future months...

Mr. Hunt: From future months, yes. It would be nice if we were at the halfway point and had half and half so we are a little bit behind, but we are not way off in terms of the revenue.

Chair Furfaro: The other option is for seven (7) months, you can divide the one million two hundred seventy-four thousand dollars (\$1,274,000) by seven (7) months, and then take that number of seven (7) months, compare it to the actual collection, and you will find that we are off by about eighty-nine thousand dollars (\$89,000).

Mr. Hunt: Correct. Some of the impediments in this year's was getting the restaurant up and operational, and projecting what that lease might be. We had some challenges getting that out as well. When we do estimates, obviously we are always looking back at historical data to make future projections, but then we are often not there or sometimes exceed. In many cases, there are other funds producing more revenue than anticipated. In the Golf Fund in particular, it is lower.

Chair Furfaro: I do want to say it is good that they are operational right now as far as having the tenant. We have something for budget. I have been to The Clubhouse twice now just to be *nīele* and I find that they are doing a very good job; the operator, the work that Public Works did on the drains, and so forth are more than acceptable and the tenant seems to be pleased. Hopefully we can get more revenue because he is serving good food and drink. Thank you, Steve. I hope that answers you, Glenn. If not, I can go over it more with you. Is there anybody else who wishes to speak on this item? If not, I am going to call meeting back to order. Are there any discussions here at this point? Mr. Bynum, go ahead.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: I just want to say that following-up on the time I was Finance Chair, Steve has the entire database of the tax rolls presented to the Council. I am trying to work with Staff and Steve now to write formulas so we can plug in different rates and understand the implications and have a tool for us to make solid analysis. We are very challenged to get that tool ready for all of us in time, but we are working on it. I wanted to appreciate that we are making progress on trying to get data in a format that we can analyze. We are going to be challenged to complete it in time for this year, but hopefully with the help of our Staff and a little bit of help from Steve's Staff, we can get it done. I just wanted to acknowledge that and let you know that we are working on trying to make that tool available for everybody. Thank you.

Chair Furfaro: Is there any other discussion? If not, let us take a vote and move on to the next item.

The motion to receive C 2014-74 for the record was then put, and unanimously carried.

Chair Furfaro: We are coming up on lunch, but I would like to go to the deferral that I spoke about in the beginning of today's agenda. At the request of the County Attorney, there is ES-709 which is dealing with legal fees for Sheilah Miyake. Before we do that, can Mr. Bynum excuse himself since he is recused from this matter?

*(Mr. Bynum was noted as recused from ES-709 and was not present at 12:21 p.m.)*

There being no objections, ES-709 was taken out of the order.

#### EXECUTIVE SESSION:

ES-709 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing to discuss the Council's obligations as it relates to Sheilah Miyake's request for payment of attorneys' fees in Tim Bynum vs. County of Kaua'i, et al., Civil No. CV12-00523 RLP (United States District Court), and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro: On this one, I sent over some additional questions and they needed some additional time to respond.

Mr. Rapozo: The reason for the request for deferral is from the County Attorney's Office or is it from us?

Chair Furfaro: No, the request was from the County Attorney's Office, but it was based on the several questions that I sent over.

Mr. Rapozo: I do have some questions. I read the request from Ms. Miyake's attorney. Ultimately, I think we can defer, but I would like to have an opportunity to ask some questions based on the letter that was submitted by Ms. Miyake's attorney.

Chair Furfaro: I do not necessarily see it that way, Mr. Rapozo. I will be glad to share my questions with you, but I am just asking for a two (2) week deferral.

Mr. Rapozo: No, I understand. I support the deferral, but I also believe that my questions should be able to get answered today in Executive Session. That is my question to my colleagues, if we can support going in. At the end of the day, if we need to defer for further questions then that is fine. If they are asking for the deferral, I guess I want to know why... if it is because of questions we asked, but I do have some specific questions, after reading the communication from her personal attorney, that I have for the County Attorney.

Chair Furfaro: Okay. We are going to take public testimony, but we can see how the vote falls. I want to make sure I am clear that my comments are nothing about allowing all of us to have questions; I just added three other questions that I want clarified before we start. If we do not get the vote for a deferral, we will post twice because I certainly want to get some answers to my questions.

Mr. Kagawa: I want to speak before we have the motion to defer...

Chair Furfaro: I am going to take public testimony, and then we will vote.

Mr. Kagawa: I just have a few words.

Chair Furfaro: Sure. Any other questions? Are there any members in the public who want to speak on ES-709? Ken, you may come up.

There being no objections, the rules were suspended.

Mr. Taylor: Chair and members of the Council, my name is Ken Taylor. I am having some real difficulties understanding what is going on, not only with this lawsuit, Tim Bynum vs. County of Kaua'i, and how the attorneys were appointed to represent the people that were involved in this case. In one hand, we have the Auditor suing the County and the County providing, in that case, an attorney for the employee who is also named in that case, Councilmember Furfaro.

Chair Furfaro: It is "Furfaro" and yes, I am named in that suit.

Mr. Taylor: In this case, we have Bynum suing the County and it is my understanding that the two (2) County employees that were involved in the lawsuit also were not provided attorneys. I see a little bit of discrimination here and I am disturbed if I have the information correct. I am sure you will straighten me out if I am incorrect. We have two lawsuits; two different individuals suing the County and County employees. In one case, the County is providing an attorney for that employee. In the other case, the County is not providing attorneys for the two employees; that is why apparently, this is being asked to make payment for the attorney fees. It rings discrimination to me and I think it is your job to resolve this problem in an ethical and moral manner. Thank you.

Chair Furfaro: First of all Ken, since you brought up my name, I think I have always operated in an ethical and moral manner. If you focus on this posting, which was requested by me, the question being asked is, "What is the obligation?" Let us get it clarified and let us get it clarified in Executive Session. That is in the posting. We want to ask those questions.

Mr. Taylor: Well, why are we in this predicament to begin with? We are treating two different lawsuits that are similar as far as somebody suing the County and County employees. In one case, County employees being covered with attorneys from being paid for by the County and the other case, the two (2) employees in question were not being...

Chair Furfaro: I just want to bring to your attention that the question is asking, "What is the obligation?" Basically, it is saying that we need clarification and that addresses your question and that is all I can say at this point. We are asking for clarification on what the obligation is. That is the question. Thank you.

Mr. Taylor: Keep in mind of the question of discrimination between the two cases and I hope in the future that any lawsuit that names the County and some County employees, that the County employees be covered or given attorneys by the County to protect themselves. Thank you.

LONNIE SYKOS: Good afternoon, Council. For the record, my name is Lonnie Sykos. Very thorny issues and we certainly spend a lot of money at meetings, on Staff, and all of this so I will be very brief here. I think it is a great thing that you are having this particular Executive Session to determine what the County's legal obligations are in this matter. I realize that it is not going to be easy because all of the issues surrounding this are complicated and were not brought to conclusion through the court system. Good luck figuring out whether or not we are responsible for the employees' legal expenses, but it is a fact that if they are operating and performing their scope of duties, then we need to provide them with legal backup for them having to perform their duties. If they were not performing their duties, then it becomes more complicated because we still have an obligation to protect our employees from some types of mistakes and other types of mistakes, we do not. I realize the complexity. There is no "one size fits all." Every single time the County finds itself in a lawsuit, these issues have to be revisited and decided. Thank you very much, Chairman, for asking the questions and trying to

get to the point that we will finally have a legal conclusion to this matter. God speed in hurrying this thing up.

Chair Furfaro: Thank you, Lonnie, for recognizing that the question is about the obligations as it is related to the case, as well as what I pointed out earlier. The question is being asked by me because as Chairman, I have certain obligations to the County in my official capacity. Thank you. Do you want to speak, Al?

ALFRED B. CASTILLO, JR., County Attorney: Chair, may I make a comment?

Chair Furfaro: Yes, go ahead.

Mr. Castillo: Thank you. I am looking for the clock— I think it is “good afternoon.” Good afternoon, Council Chair and Councilmembers. Al Castillo, County Attorney. That is the reason for the Executive Session where your attorney, who would be either me or my Deputies, would advise you on the duties, privileges, and obligations of this County. When we make the determination— and the reason why I am up here is because I do not want to cast a cloud as far as “discrimination” and “one side is favored and other side is not.” It is a complex legal analysis that we go through. If you would like a full explanation with the facts involved, that is done in Executive Session, but it is all under the law that we provide you with the legal analysis and the legal advice. Thank you.

Chair Furfaro: Thank you, Al. What I referred to is in the posting and it is my question— “What are the obligations?” Thank you. Do you have a question?

Mr. Rapozo: It is a legal question.

Chair Furfaro: Okay. Al, you have another question.

Mr. Rapozo: Thank you, Mr. Chair. Al, normally when someone requests the County to pay something, it is done in the form of a claim that comes to the Council. Normally, whatever the case may be and they feel that the County should pay for something, it is done through the claim process. I think that is what the Charter says is that the claim comes to the County Council, and then it goes to the County Attorney. The claim itself is public record. In this case, I do not believe a claim was filed. I am assuming this is a request from Ms. Miyake’s attorney, which I did see a copy of the letter. That letter is not confidential as it relates to requests for... it is basically a claim.

Mr. Castillo: Councilmember Rapozo, I apologize. I have not had a chance to see that letter and the point person on this is Jennifer Winn.

Mr. Rapozo: You just said that you were going to come into Executive Session with us.

Mr. Castillo: I said either myself or my Deputies.

Mr. Rapozo: Okay. Well, make sure it is your Deputy who read the letter and is familiar with the case.

Mr. Castillo: It is my understanding that there are questions and there are a lot of factors that we need to examine, and we are not at the point where we would be able to give you a full and complete Executive Session that is meaningful. That is my understanding of the request for the deferral.

Mr. Rapozo: You requested the Executive Session, correct? Was it you? Chair, you said you asked some questions.

Chair Furfaro: I will tell you what the procedure is. The question came from their attorney. I identified it as a potential Executive Session, but I reserve the right to send additional questions. They responded to me that they were not prepared to answer my questions and therefore, requested the deferral.

Mr. Rapozo: Okay. Well, I have some questions as well that I did not unfortunately send over in writing because I had anticipated the Executive Session. If we go into Executive Session, I will have an opportunity to ask my questions and if you are not prepared to answer them, then we can defer. Thank you.

Chair Furfaro: I am going to call the meeting back to order.  
Did you want to speak, Glenn?

Mr. Mickens: Thank you, Jay. I just have a short comment. I am pretty much agreeing with Ken and I know that we cannot be in Executive Session, so probably the answer will come there. In my opinion, Ms. Miyake certainly deserves payment of these attorney fees. I heard they are high. I absolutely approve, but why was Ms. Carvalho's attorney fees not put on the agenda for the payment also? Since both Ms. Miyake and Ms. Carvalho had to hire personal attorneys to represent them in the Bynum lawsuit, then both should have been entitled to reimbursement. Again, I presume this is going to come up in the ES, right? Hopefully the public will be able to hear an answer to that. Thank you, Jay.

Chair Furfaro: I am going call the meeting back to order.  
Al, did you want to speak again?

Mr. Castillo: Chair, I have been asked to clarify one thing in all fairness and this is in response to what Mr. Taylor said. In your case, the Counsel was appointed to you in your official capacity and you have elected not to hire anyone in your personal capacity. I just wanted to...

Chair Furfaro: I think I did say that as the Chair, I have an official capacity for this body.

Mr. Castillo: Yes.

Chair Furfaro: Enough said for right now.

Mr. Castillo: I just wanted to make sure that...

Chair Furfaro: I appreciate your clarification.

Mr. Castillo: Thank you.

Chair Furfaro:  
are open for discussion.

I will call the meeting back to order and we

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Kagawa: I will not be supporting the motion to defer. As the Chair and Mr. Hooser said in the last meeting on this case, I want to move forward and we have other pressing matters. Deferring this item is not moving forward. I want to go into Executive Session and find out what the tab is and if that is that reasonable. Any other questions that I have that cannot be answered here, I just want to ask it and if you are not prepared to answer them, then we will defer it in the Executive Session and have it on next time. I do not see why we are deferring something that really we need to get those answers so we can move forward. I brought up that settling the Bynum lawsuit is... I said, "What about Sheilah's fees? What about Shay's fees?" When we settle, we are saying, "We do not want this case to go to trial and we feel like we will just pay them off and it is done." Well, you forgot about two (2) employees that work for the County as well and they have attorneys' fees as well. Let us get it over with as fast as we can, and then let us move forward. Thank you.

Chair Furfaro:

Mr. Hooser.

Mr. Hooser: Thank you, Chair. I am hopeful that one day we will not be talking about this situation further. I do not know when that day will come, but I think it is important that the public understand, and I think you put it properly, Chair, that the purpose of the agenda item is to discuss the situation. It was not to approve or disapprove anyone's fees, but what our obligations are in paying fees. I think a reasonable person would say that the County should not pay every attorney's fees for every County employee's actions. Therefore, it depends on the situation and the situation for every person is going to be different. It is a complicated situation. Whether or not we should discuss it today or not— normally, these kinds of situations where I could go either way, I would defer to the Chair, and today I will also defer to whatever direction you want to take with the Council on this matter. Thank you.

Chair Furfaro:

JoAnn.

Ms. Yukimura: I would like to see Councilmember Rapozo have his chance to ask his questions of the attorneys and anybody else, but I would also like the Chair to get his answers to his questions. I would be in favor of going into Executive Session, but deferring at the end of our Executive Session so that we can make sure that the Chair gets his answers, too.

Chair Furfaro: Okay. I guess people would like to hear from me next. I have no problem going into Executive Session or not. None of you filled out other questions for the County Attorney, but I did, and my response from them was that they are not prepared to answer me. If you folks want to go into Executive Session, just know that I do expect a new posting so I can get any questions answered. I have no problem.

Mr. Rapozo: Mr. Chair, I am not saying that we are going to dispose of this item today; I am not suggesting that at all. A new posting would

not be required. We are just going to defer this posting for another meeting. Again, as we have on so many occasions, postings for Executive Sessions are an opportunity for us to ask the questions. Maybe in very few occasions have I sent over written questions to the County Attorney's Office in anticipation of an Executive Session because I am under the impression that when the item is posted on the agenda, they are ready to come and give us a briefing and that is why it is posted. If they are not ready, it should not be posted. In most cases, they are and in some cases, specific questions from certain Councilmembers cannot be answered so we defer. I am not asking for anything different. I think this is really the takeaway for the public in understanding in general that when a County employee is sued in their personal capacity, the County cannot abandon them. What would that do for every police officer, every fireman, or any occupation out there that deals with the public that if they get into an altercation and a disagreement and they are sued, and they are left out to dry? I do not think that is appropriate because then you end up with County employees who are very hesitant to do their job if they do not have the assurance that if they get sued. Believe me, like this case, anybody can sue and create allegations in a lawsuit, and that poor employee is going to be left stuck holding the bag? I want to convey to the public that whether it is Ms. Miyake or "Mr. Doe" who works in Public Works—when they get sued in their individual capacity, I do not think it is reasonable for us to let them go and rack up thousands and thousands of dollars of legal fees. Like I said, I do have some questions for the Executive Session and I am hoping that we can get in there today. Thank you.

Chair Furfaro: Sometimes, Mr. Rapozo, when I make a reference about a new posting, you might be reading into it. I would think after having the first Executive Session, there might be a broader scope that would require a reposting. As it goes for police officers and so forth, typically in their role, they are covered by County attorneys and so forth. Your point is well-taken. To Mr. Hooser, I really do not care. I just want to make sure that you understand that I am still expecting answers to my questions. If somebody wants to make the motion to defer, that is fine. If someone does not want to make the motion, that is fine too. It does not matter.

Mr. Kagawa: Let us move to go into Executive Session later on this item.

Chair Furfaro: No, we will do that later. This item is "dead" for now, you might say. We have a couple of announcements to make. We have gone longer than we should have. At 1:30 p.m., we have a public hearing, but that public hearing will now happen at 1:45 p.m. Then I will give the floor to Mr. Kagawa for your Resolution and that will probably be about 1:55 p.m. or something like that. We are breaking for lunch.

There being no objections, the meeting recessed at 12:45 p.m.

The meeting reconvened at 1:50 p.m., and proceeded as follows:

*(Mr. Bynum was noted as present at 1:50 p.m.)*

*(Chair Furfaro, the presiding officer, relinquished Chairmanship to Mr. Kagawa.)*

Mr. Kagawa: Clerk, can you please read the Resolution regarding Ni'ihau?

There being no objections, Resolution No. 2014-10 was taken out of the order.

RESOLUTIONS:

Resolution No. 2014-10 – RESOLUTION REQUESTING THAT ISSUES AND EFFORTS AFFECTING THE ISLAND OF NI'HAU BE RESOLVED THROUGH COMMUNITY-BASED DISCUSSIONS AND NEGOTIATIONS AND REQUESTING THE HAWAII STATE LEGISLATURE AND THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO CEASE ONGOING LEGISLATIVE AND ADMINISTRATIVE INITIATIVES TO ADDRESS THE MANAGEMENT OF COASTAL AND MARINE RESOURCES AROUND THE ISLAND OF NI'HAU

JADE K. FOUNTAIN-TANIGAWA, Deputy County Clerk: At this time, we have one (1) registered speaker.

Mr. Kagawa: Because we have a short time window which we will try and stick to, we want to try and be finished in forty (40) minutes to keep our appointment that we have. However, if it does take longer, it is what it is. If the Council agrees, we can allow three (3) minutes on the first go-around and if speakers wish to testify further, they can be called back for another three (3) minutes. Is that okay, members? Can we proceed with the first registered speaker?

Ms. Fountain-Tanigawa: The first registered speaker is Mel Wills.

Mr. Kagawa: Please begin by stating your name and you will have three (3) minutes.

There being no objections, the rules were suspended.

MEL WILLS: Thank you. My name is Mel Wills. I am in favor of this Resolution. Currently through the legislative bodies on O'ahu, there are so many bills that we have to constantly monitor and send testimony in, and they change almost daily. I feel that this Resolution would make a clear statement to the Department of Land and Natural Resources (DLNR) and to the Legislation, your stance regarding Ni'ihau that it is a Kaua'i issue. The Senate Bill No. 2125 has changed frequently and I feel that it is just really, really important for this Council to make a clear statement to them. You will read an article tomorrow in The Garden Island newspaper. My charter vessel, Holoholo Charters, was out at Lehua snorkeling, doing our normal tour, and we came across a humpback whale that was entangled towing two (2) red buoys. We spotted that and we reported it to the whale sanctuary to try and arrange that animal being helped. We constantly take over. Biologists from the University of Hawai'i and Biologists from DLNR have been doing that for the last ten (10) to twelve (12) years, contributing to their efforts to maintain Lehua. We do not have any impact over there that is negative. We are a "dolphin smart operator" meaning that we never feed any animals over there or we do not extract anything. We do not do anything except share the beauty of Kaua'i and Ni'ihau with visitors. One of the bills currently that has a lot of momentum is the Senate Bill No. 2125. It states that it is relating to "marine life conservation district." There are no marine life conservation districts on Kaua'i and Ni'ihau, but there is one on O'ahu for instance; it is known as Hanauma Bay. Marine life conservation districts are supposed to be for the people to enjoy it;

snorkel, swim, and sunbathe. These kinds of bills— we have to keep fighting. It just goes on and on. I strongly urge you to support your Resolution today. Thank you.

Mr. Kagawa: Are there any questions for Mel? If not, next registered speaker please.

Ms. Fountain-Tanigawa: The next registered speaker is Kahea Faria, followed by Brian Faria.

Mr. Kagawa: Please state your name and *mahalo* for flying in from O'ahu for this issue.

BRIAN FARIA: *Aloha.* My name is Brian Faria. I would like to thank the Chair for this opportunity to speak on behalf of this Resolution. I will try to make this real quick. I believe, from sitting here and listening to you guys debate today, that I am very encouraged by your guys' ability to think long-range and compassionately about issues. I do not believe that this thing is mean-spirited, but I do have a few concerns about it. Mainly, I feel that it is, intentionally or not, attempting to silence what I perceive as the community's voice. What I mean by "community" is not in the sense of this Resolution of what separates community and residents, but I mean "residents." I say this because of what is at stake for the residents. If they do not get protection for their resources, they will end up leaving. I am speaking on this as a stakeholder because this is part of not only my own personal heritage, but our State's heritage. They will even go to Kaua'i... they will go to Kaua'i and be forced to assimilate. They will forget Hawaiian and that will end the last native speaking community, not only in Hawai'i, but in the world. We will lose that to the world. That is the urgency in which I speak today. We need to be very careful with this. I do feel for the fishermen. My grandpa had to leave Mōkapu as a kid and move to Kahalu'u. We cannot go back there. I understand that loss, but this is a different type of loss because it affects land and the people's connection to it. We have a stake in it because this is our identity as a State; not only as a race, but as a State. This is what we are named after. If we lose that—and we will, as history has taught us in 1886, 1893, and 1898. Every time we have had to step away from our land, we have lost our language. We are going to lose it. Revitalization by second language learners like myself can only take us so far. We need this. We need them to be safe. We need the place to be safe. Thank you very much for your time and good work that you guys are doing here. Thank you very much.

Mr. Kagawa: Thank you, Brian. Are there questions for Brian?

Ms. Yukimura: Mr. Faria, thank you very much for being here. You are from Honolulu?

Mr. Faria: Yes.

Ms. Yukimura: Can you tell us a little bit about the context that you are coming from?

Mr. Faria: Yes. I am not here in my official capacity for the University, but I work for the University. I teach in the Hawaiian Language

Department. I work with different schools that deal with Hawaiian emergent and revitalization efforts. That is my take on it.

Ms. Yukimura: Thank you, that helps.

Mr. Faria: I am not here in my official capacity.

Ms. Yukimura: I understand. This Resolution is calling for community-based discussions. Are you concerned that this format would drown out the voices of the people who live on Ni'ihau?

Mr. Faria: My concern is what is at stake for them. Just to speak on that alone and another thing that we have not touched upon was what happens to a community when they become displaced and the physiological impact that is going to have on them? I look at these kids and for them to have to leave because there is no more fish—that is going to be terrible. It is going to lead to a host of other problems. Our people have suffered through it. We have studies and grant moneys that are given to agencies to try and remedy this, and here we have a perfect opportunity to catch it and nip it in the butt before it happens to another group. I worry about a Resolution like this, not because I think that... I worry about silencing them when they have gone so far in making an effort to speak for themselves to speak to power... to speak truth to power, which is very commendable for anybody and that is what I loved about today, which was seeing all of these people get up and speak. I feel like this is teaching them that their legacy and their tradition, which is what we are named after, this State, are not being valued. I worry a little bit. I do not believe that is the intention after meeting you folks, but things do happen like that sometimes where even with a good intention, a bad outcome can come. I believe that we need to be very careful.

Ms. Yukimura: Excuse my ignorance, but one aspect of the problem or issue is that the fish and sea life resources that the Ni'ihau people have relied on forever almost... that is actually declining in that three (3) mile perimeter?

Mr. Faria: From what I understand, yes, it is. They are being impacted by they are having to supplement more than they are used to and if it continues, it will decline further. We live on O'ahu. We come to Kaua'i and think this is Hanauma Bay.

Ms. Yukimura: Hanauma Bay, although it is for use, any and all harvesting has stopped in Hanauma Bay.

Mr. Faria: Other places where I have read about where they have done sanctuaries like that have had similar issues like this where it is real contentious. What ends up happening with it is that there is a spillover effect that although there is a group that is allowed to harvest from the area, the population comes back and spills over into areas that are not protected on the sanctuary and the fishermen see an increase in fish stock on the places outside of the area. I am not an expert on that and I should not be speaking to that, but these are things that I have seen. Just to engage your question, I am sorry.

Ms. Yukimura: Well, this Resolution is recommending a process and there are good processes and bad processes. It really depends a lot on how the processes are designed and how inclusive it is, but also how... it depends on a lot of things. With Bill No. 2491, we went through this thing with joint fact

finding, so determining what the facts actually are and whether there is in fact a decline of the resources within that area. Also, I have heard what you have said that if you set aside certain conservation areas — and it works, there is a proliferation outside the conservation area because ecosystems cannot be just cut apart; they are all interconnected.

Mr. Faria: Right.

Ms. Yukimura: My main question was whether a process would squelch the voice or give space for the voice and whether there could be joint fact finding of that sort. That is all I am inquiring about. I do not know the answers to my questions.

Mr. Faria: Sorry, I am taking up a lot of your time. My worry here is that they have stepped up and organized. They as a community, those residents, have met and made a decision to come forward. They went through a process that ended them up in the Legislature. They have worked hard for that and it is not economically or physically easy to get these elders on an airplane to O'ahu. It is very uncomfortable, but yet they do it. I think they have come up with a process on their own and I think that is commendable. I think that needs to be commended, honored, and supported. As far as other people's interest in outside interests, whether it would be in the fishery that is not acceptable to the residents—I do not know how to remedy that because I would say... it is very easy for me to say this. I do not go fish where my grandfather fished. I do not live there. I know where it is, but I do not go there. That is not my place.

Ms. Yukimura: These are very difficult issues. Just you bringing it up, the issues of difficulties of participation and everything, we could ask that the process be on the west side so that people do not have to get into planes.

Mr. Faria: But they have already made progress towards that.

Ms. Yukimura: The other question is who are the stakeholders in this issue? Is it just the Ni'ihau people or do others have to be included in the discussion? I am done with my questions. Thank you.

Mr. Faria: Thank you.

Mr. Kagawa: I think we have one more question for you. Mr. Rapozo is the co-introducer of the Resolution. It is not just me.

Mr. Rapozo: Thank you for flying over. I think I share the same ignorance as Councilmember Yukimura because as I read this very short, general Resolution, it talks about exactly that; the community involved; the community of Ni'ihau. The fact that a lot of the activity that is going on O'ahu is being done by legislators who do not represent the County of Kaua'i. That troubles me to some point, but I recognize that they have a duty to serve the entire State. I am having a difficult time understanding because I agree with you one hundred percent (100%). Your testimony is right on target, but I do not see how this Resolution takes away from that and maybe you can help me understand that.

Mr. Faria: From what I have experienced on O'ahu and watching this play out in the Legislature; they have been coming to O'ahu. There

have been other people opposed to it coming from Kaua'i as well. I do feel for you guys because you would like to be the ones either to stand up and say, "We need to support this, introduce it, and be the ones that point the spear," so to speak. I do understand and recognize that chain of command, so to speak. They have put a lot of time and effort. I have been part of different meetings where they have tried 'Aha Moku and DLNR, and talked to many people. It was not that the legislators had dictated them to come there. They have been actively searching for... they have been showing agency in their efforts to make their place a better home; a safer home. In doing that, they have run into legislators that could not ignore it and say, "I need to help you." Maybe they have overstepped boundaries at times, but...

Mr. Rapozo: I think there is a certain level of professional courtesy within the political arena.

Mr. Faria: I cannot speak to that.

Mr. Rapozo: Yes, I do understand that. It kind of hit me by surprise when all of a sudden, some legislator from another County — it is like our delegation introducing a bill that would separate Kona and Hilo because we felt that it was best for the community. That is kind of why I feel...

Mr. Faria: But it has been coming from the residents. They have been out there looking for solutions.

Mr. Rapozo: Thank you.

Mr. Kagawa: Are there any more questions? If not, next registered speaker. Thank you, Brian.

Ms. Fountain-Tanigawa: The next registered speaker is Kahea Faria, followed by Shandra Macatee.

Mr. Kagawa: Please state your name and you may begin.

KAHEA FARIA: *Aloha mai kākou.* My name is Kahea Faria. I work for the University of Hawai'i. A big part of my job is to serve Native Hawaiians and work in areas that serve a high population of Native Hawaiian children. I am here because I was really surprised to... I guess you could guess for now— "Faria" and "Faria." Brian is my husband, so basically we have the same story. I was really surprised to see a Resolution like this and I am actually here to ask for your support to back up these bills that are in the Legislature. They are led by the community. That is the Ni'ihau community who is impacted by what is going on there. They have to live this way, so I get really emotional because it is really important. In serving communities with high percentage of Native Hawaiians, they do not have a culture, they do not have a language, and that is what I do. But you have these people with a culture, with a language, and it is flourishing. Resolutions like this kill them. It will kill the last thing that is surviving in Hawai'i. I am here to actually ask for your support to back up the bills that are in the Legislature. In looking at this Resolution, the fourth paragraph where it states "community confusion"— I do not think they are confused. They know what they are doing. This thing has been going on for years. They know what they are doing. They are not misinformed. I am a Doctor of Philosophy (PhD) student at the University of Hawai'i. I think I kind of can determine what is best and what is not best. These people know what they are doing. It is not premature either. I am not sure where

all of this is coming from. It is definitely not coming from the stakeholders who are impacted— that is, the Ni‘ihau community. The last paragraph here, “Be it resolved by the Council that this go through a community-based discussion”— they have had many discussions for years about this and “negotiation between its residents”— they are residents. They have done this already. They would not be at the Legislature if it was not vital.

Mr. Kagawa: Thank you, Kahea. If I can just answer as the introducer of the Resolution— when I first saw the bills regarding banning fishing on Ni‘ihau, I approached several Hawaiians that I knew have families there or even go back and forth and I asked them... in fact, at the Waimea Christmas parade was the first time I approached a lady that I knew from a friend that I knew from Ni‘ihau and I asked her how she felt about the fishing ban. She said, “I am against it. I want to keep things the same.” That is why there is confusion because there are Hawaiians, even with ties to Ni‘ihau, that do not support what the bills support. That is why “confusion” may be in there because there are other Hawaiians that do not feel strongly feel for it as well. I think it is our job as a Council to have an open forum so we can discuss it. That is why it is in the Resolution that we have a community-based discussion and there can be all Hawaiians on that, but at least to do a fact finding and determine what is best is kind of the what the impetus of having this Resolution. It was not mean-spirited to kill the Hawaiian language or harm the people of Ni‘ihau because the people of Ni‘ihau are our neighbors and our friends. They are friends of mine that I grew up going to school with at ‘Ele‘ele School like the Kanahale family and what have you. Please do not take this Resolution being introduced as being “mean” or “ill-spirited” towards Hawaiian people. Are there any more questions?

Ms. Faria: Can I respond to that?

Mr. Kagawa: Yes.

Ms. Faria: I hear in speaking to other Hawaiians and I have heard of people saying that it is a tradition and right. These are Hawaiian customs that came during the Hawaiian Kingdom, which moved on to the Territory of Hawai‘i, and then now we are here. The customs and the traditions there do not go up to my father’s time or my grandfather’s time; it goes back for one hundred (100) years. That is the tradition that is being disrupted right now and these bills are seeking protection so that this continues for one hundred (100) more years.

Mr. Kagawa: Thank you.

Mr. Rapozo: Thank you for being here today. I will ask the same— Brian, I heard you say that you could answer my question, but I am still trying to... I cannot understand how a community dialogue would kill the Ni‘ihau culture. I am having a difficult time with that. All of the bills that have... a lot of them have died, but we still have a bunch of them that are alive. None of them provide any data as to the inventory of the fishery. There is no data that would convince me that if fishermen are allowed to fish offshore, that the people of Ni‘ihau would die. I do not see that in any of the bills. I think that is where this Resolution— again, as a co-author, the intent was obviously not malicious at all, but it is to open up the dialogue to see if is there some opportunity to coexist. I know you have referenced several times in your testimony that the language will die and the culture will die, but I do not understand and maybe you can help me how this Resolution would do that.

Ms. Faria: I think I am going to answer that by way of just viewing all other Hawaiian islands who have lost their Hawaiian language. There is no other community in the world who is a Native Hawaiian speaking community. That is the only one left.

Mr. Rapozo: Let me just interrupt because as you state these... and I appreciate that, but explain to me how this takes that away.

Ms. Faria: This is the people's livelihood, so the fact that it has been interrupted— it is safety issues as well, and I am sure you folks have all seen it in the papers or heard of it. In the past, you do not really hear from them or about them. They very quiet. The fact that you even hear them— this has been going on for years. How does that kill the culture and the language? In viewing what has happened around Hawai'i, all of our resources are depleted. There are dead coral reefs on O'ahu. Some of the beaches are just filthy and that is where the tourists go. They are happy to be in waters like that. If that happens on Ni'ihau— I know you are looking for data. They do not function with a Western perspective; they function with a Native Hawaiian traditional perspective. The data is not going to be the same. You are not going to get numbers. You are going to get a lot of "plenty," "no more," or "little bit." That is the kind of data that they have. They have been fishing all of their lives. They know when it is low and they know when there are a lot, but we do not have those kinds of data. To even bring people in from outside to collect those data would be disrupting their way of life.

Mr. Rapozo: I have one last question.

Ms. Faria: I am sorry...

Mr. Rapozo: No, I appreciate the answer. Have you been on the island?

Ms. Faria: I was raised there.

Mr. Rapozo: On Ni'ihau?

Ms. Faria: Yes.

Mr. Rapozo: When was the last time you were there?

Ms. Faria: I still go there every now and then, so I am very familiar with how life is there. I am very fortunate to have another perspective to experience two different worlds.

Mr. Rapozo: I cannot speak for the rest of my colleagues, but I can tell you that I have never been there. I know several years ago, I did send in a request to go and was never able to get on the island. It is kind of difficult for us who supposedly represent the island, but cannot even get on the island. Maybe this issue will provide for a field trip to Ni'ihau so that the seven (7) of us can go see what it is like on the island. Thank you.

Mr. Kagawa: Councilmember Bynum.

Mr. Bynum: Thank you for being here. Senate Bill No. 2125 is the Bill that you are talking about in the Senate that has been amended and now calls for DLNR to do a process. It is amended and as I understand, it does not apply any restrictions in Ni'ihau. The Bill originally did and now it has been amended to say, "DLNR, start a process to determine how you would apply this on the smaller islands." Do I have a clear understanding of the current status of the Bill?

Ms. Faria: I believe so. I think you know as much as I do.

Mr. Bynum: I was reading through the testimony that has come for and against the Bill. I have a couple of questions. I have been a Councilmember here for nine (9) years or so. Ni'ihau is part of Kaua'i County and I asked many times, "How do I understand what the needs of the people of Ni'ihau are and represent them if I cannot meet them?" I made efforts to meet family members on the west side and to educate myself because what I was told was there are only three hundred (300) people or three hundred fifty (350) people and there is this remarkable lifestyle that is happening there that is unique anywhere in the world, and having a bunch of politicians run over there to shake hands and talk story was not in their best interest. I accepted that, but the frustration is that all of us here feel responsible for those individuals and we do not have that easy window to understand their needs so that we can represent them. I just wanted to share that. From our perspective, many of us have been respectful of what we were told that we need to leave this *kīpuka* on its own because the culture is working there. Then from our perspective, suddenly we see in the press that there is a bill to ban activities that are currently happening like tour boats and fishing. I have been to Ni'ihau near shore waters in my own boat in the past when I had it and it is a glorious experience. I knew I needed to understand more of where this was coming from. It is out of left field for some of us here on Kaua'i where we are legally responsible for the health and safety of this County. In the committee report, there is language from the Legislature to us, the County Council, saying that we have to increase our law enforcement presence to deal with near shore water issues. I do not understand that statement at all because the County of Kaua'i does not have authority in near shore waters, so I do not know what kind of law enforcement... I guess that is the state of confusion of why we would have that and what other members said that this, for us, comes out of left field. There is a very huge lack of courtesy from those legislators in O'ahu who, I think, put these kinds of things out. They may be good and I have not made a determination. I see that it has been amended and that there are many Hawaiian people supporting this Bill... people that I respect and see as people I need to learn from. It is a difficult situation because as a Councilmember, I want to care for these folks and I want to understand. I feel responsible because I took an oath, but I have never been to Ni'ihau and had a dialogue with the residents, see what their homes look like, and that kind of thing because we have been respecting— is what I am saying making sense?

Ms. Faria: Yes, very much. We do appreciate that consideration of allowing our people to remain private. We really do appreciate that.

Mr. Bynum: I have known kids who were there who came to live in Waimea, so I have had that window from close family members and those individuals who lived there until five (5) or six (6) years ago and now live on the

west side. Thank you very much for your testimony and your willingness to answer these questions.

Ms. Faria: Yes. Thank you very much and thank you for this opportunity to even speak before you. I really appreciate that.

Mr. Kagawa: Thank you. We have another question for you.

Mr. Chock: *Aloha kāua.* Do you believe that as neighbors of Ni'ihau that it would be best to work together for a better solution to address the needs that we are both facing? We are facing, as well as the State and the world, the same things like degradation of our resources. To have a conversation with people like leaders around the table and others in the community, of which we have not been a part of, but would that help us to come to some real good solutions where we can both thrive and come out with the best outcomes?

Ms. Faria: My response to that would be for us as a *maka'āinana* of the land and our *konohiki*. The way that the community functions is from a verbal contractual agreement with the King that the Robinsons take that role as *konohiki*. We do not have that role. There was clear guidance or... I do not know what you would call it... "agreements" that we take care of our role as *maka'āinana*, and that is the land, and they are the *konohiki*. Whatever issues we have, they are to represent us. It is not anything for them to give; it is not their right...

Mr. Kagawa: We have to take a tape change break, but you can sit right there. We probably have more questions for you.

There being no objections, the meeting recessed at 2:27 p.m.

The meeting reconvened at 2:32 p.m., and proceeded as follows:

Mr. Kagawa: First, I want to thank the Chair for allowing us to put this Resolution on with very short notice. I guaranteed him that it would take less than one (1) hour. I want to apologize for being very inaccurate with my timing. Chair, you have the floor.

Chair Furfaro: I just want to make a housekeeping note. Mr. Kagawa, this is your Resolution. I will let you run the meeting, but we do have three (3) sets of attorneys that have traveled today for specific times. I would like to say that it would be inappropriate for us to go past 2:40 p.m. That does not mean that we would end the meeting; it will end the period of us taking testimony, but those here that are on Kaua'i that would like to continue will have the opportunity. But we have three (3) sets of attorneys from Honolulu that are on the clock.

Mr. Kagawa: Chair, I have a question. Does it mean that we can go in to deal with the attorneys from O'ahu, and then come right back?

Chair Furfaro: Yes.

Mr. Kagawa: Is that the plan?

Chair Furfaro: Yes, that is the plan.

Mr. Kagawa: Is there a projected time as far as how long?

Chair Furfaro: I am no better at projecting time than you are, but I would like to take care of the ones that require appropriate time, and then give you the floor. Let us go for another twenty (20) minutes.

Mr. Kagawa: *Mahalo.* Do you have a question,  
Councilmember Yukimura?

Ms. Yukimura: I do.

Mr. Kagawa: Well, you are going to gobble up the whole twenty (20) minutes. I am just kidding. I am going to let Kahea finish giving her answer to Councilmember Chock first.

Ms. Yukimura: Yes. Thank you.

Ms. Faria: Just to finish up, the duty and responsibility of the *konohiki* was given to the Robinsons, so if you folks want to speak to the community, the traditional custom/practices are that you speak to the Robinsons who will speak to us. That is normally how it went and that is how it has always been. That is probably why people have never talked to the community before until they decided to show up for meetings or at the Legislature. I think that is the practice that we would like to keep and continue.

Mr. Kagawa: *Mahalo.* Councilmember Yukimura.

Ms. Yukimura: Kahea, I find it so remarkable that you grew up on Niʻihau and have gotten the education you have and now can speak to help translate for us. I really appreciate that you are here today.

Ms. Faria: Thank you.

Ms. Yukimura: You said that with respect to the last paragraph on the first page of the Resolution that there already have been community-based discussions. I just wanted to know how you define "community."

Ms. Faria: I am defining "community" as the Niʻihau community, the stakeholders, who are impacted by all of these bills that they have put forward.

Ms. Yukimura: In the practice of traditional Hawaiian framework, the decision-making for the area over which the *konohiki* has jurisdiction would... or the community for that jurisdiction would only be Niʻihau people, in your mind?

Ms. Faria: Yes. Traditionally, it has been that way.

Ms. Yukimura: Right. Is that why you feel the process that would include a larger community would not really be the right way to do things? Is that what I am hearing?

Ms. Faria: Exactly. For me, I live on O‘ahu and I feel that I do not have a say, so I am basically speaking on behalf of this community as I was sent to go to school for that reason.

Ms. Yukimura: I understand and I think I even heard that from your husband, who though he understands, got first hand from family what it is like not to be able to fish in an area anymore and he will still not impose that desire.

Ms. Faria: Right.

Ms. Yukimura: Okay. With respect to the Senate bills however, the Senate bills are now calling for a process, too? I am sorry because I really have not kept up with the bills. If so, are you asking for support for those bills or are you asking for support for the original bills?

Ms. Faria: I am asking for support for the bill right before it got amended.

Ms. Yukimura: I see. Okay.

Ms. Faria: So the task force that they added in during the last hearing—I am not in support of that.

Ms. Yukimura: Okay. Thank you for clarifying that. I understand now. Thank you.

Mr. Kagawa: Councilmember Hooser.

Mr. Hooser: Good afternoon. Thank you so much for being here. I appreciate it. I apologize for my ignorance in terms of the history of the culture as how it may have worked or been intended to work. With regards to the *konohiki* process, is that individual *konohiki* by way of lineage or by way of land ownership? Do the children of the *konohiki* become the *konohiki* or the owners of the land? Could you explain what determines the *konohiki* status?

Ms. Faria: From what I know from history is that the Sinclair/Robinson family is one of the few... back then they were called “Hawaiians” and they were recognized as “Hawaiians”... they are “white,” so they are one of the few... maybe the only “white” people to have been given that role, responsibility, and duty. If I was them, I would not have taken that duty. It is basically servitude to a people that is not even you, so they have accepted that and held on to that for over one hundred (100) years. Thank you.

Mr. Hooser: That is fine. The Robinsons were granted the *konohiki* status by the King and moving forward with that status transfers to their children?

Ms. Faria: So far, that has been the way, yes.

Mr. Hooser: That is a tradition?

Ms. Faria: Yes. For us as the *maka'āinana* of the land, that is not our role or responsibility, but it is for us to so expect that responsibility and duty from them.

Mr. Hooser: Okay. Thank you very much.

Mr. Kagawa: Councilmember Rapozo.

Mr. Rapozo: It is not often that we get someone with your background here, so I am going to take advantage of that and ask as many questions as I can because I am trying to learn through you because of your experience as far as having actually lived and raised on that island. A lot has been said, and forgive me if I ask a question that may be inappropriate, but as I try to understand... because I can visualize what living on that island must be like. It has been said many times by many people about the necessity to keep that native culture, the native island, the native language, the values, and so forth, and that is. But I have not heard from the community of Nīihau, ever, in the past. I understand that there are some commercial ventures of the island. Are you aware of that?

Ms. Faria: Yes.

Mr. Rapozo: I have spoken to tourists who have actually been able to go hunting on that island, which shocks me because I cannot even go to see my constituents, but if tourists have enough money then they can go and hunt on the island. There is also an array of Department of Defense antennas. What was the community's feeling back then when these ventures were being proposed? Did the community say it was okay? Did the Hawaiian community say that it was fine? Is that in line with what you are trying to convey to us that they this may harm or this may destroy? I did not get that when there are people out there building all of these radar domes. I did not get that when the commercial ventures like the helicopters and hunting—I did not get that from the Nīihau community, but we are get strong opposition to a Resolution that wants to open dialogue, hopefully so we can coexist and keep Nīihau for the native people. Any response to that?

Ms. Faria: Yes. I feel terrible that I have a response for everything. I was on the island when all of these things happened. I was still there. The roles of the *konohiki* and the *maka'āinana* were never broken at all, so in terms of these new activities that came in, we were well aware and informed. Among many other things, that has never probably been heard about before. As a kid, I do remember having community meetings about the options of the helicopters and the options of those things that you talked about.

Mr. Rapozo: The Department of Defense contracts.

Ms. Faria: Yes. I should have said a disclaimer, but I am a second language English learner so I do hear things, but then I forget what it is. But yes, we are aware. The way that we see it, this family has been able to manage us for over one hundred (100) years, so they know what they are doing. We believe that their intentions are to care for us and to continue with the agreement that they made with the King

Mr. Rapozo:  
have never heard of me on O'ahu.

I appreciate your response. You probably

Ms. Faria:

I have heard of you.

Mr. Rapozo: Okay, good. I did not hear Senator Hee, Chun Oakland, English, Espero, Gabbard, Galuteria, Green, Kahele, and Keith-Agaran; all of these guys come to Kaua'i and say, "Let us stop that because we want to preserve the island." I never heard that from anybody, and then all of a sudden these commercial ventures, which all of us... I do not think the Department of Defense, back in Kamehameha's day, set up a contract with the landowners back then. I think you are getting my drift.

Ms. Faria:

I do.

Mr. Rapozo: Now, we as a Council, represent all the stakeholders, which include our fishermen. I do not see that segment of the community being represented by these State legislators. I appreciate what they are trying to do, but you cannot have your cake and eat it too. My message goes out to the legislators, not to you. I agree that we need to preserve that, but if we have to preserve it against— and the cost for that is no Kaua'i fishermen can fish off of Ni'ihau for three (3) miles, two (2) miles, or whatever they are asking, then I do not understand the equality, the fairness, or the equity to basically say that "the culture and the language is not as vital if we make money with the Department of Defense or with tourist money that is coming in for tours and hunting." It is a double standard is what I am trying to say, on the part of these legislators, not the people of Ni'ihau. I could be totally wrong, but I have a feeling that if you polled the native community of Ni'ihau, "Do you agree to helicopters, hunting, and people coming from far away that have money to come and hunt? Do you believe that we should enter into contracts with the Federal government of America to house some military radar?" I am not so sure they would agree. My point is that if the motive... if the desire is to preserve that culture, then that needs to be all the time, not just pick and choose.

Ms. Faria: I hear what you are saying and I think the reason why all of those efforts worked was because it was community initiated. The community did that. If anything, we are at fault for it. The fact is that our language and culture still stands. I think the reason why other things have come up and that has not gone well is because that was not our initiative and does not benefit the community at all; it actually hurts them. I think that is... not I think, but I have heard that is the reason why there are all of these problems that has occurred.

Mr. Rapozo:

Thank you.

Mr. Kagawa:

Are there any more questions?

Mr. Bynum: I do not want to repeat what I said earlier, so I will ask a different question and this is just a naïve question. All of the testimony that I read is about preserving the resources and seeing Ni'ihau as an *ahupua'a* of itself. I am in a different *ahupua'a* and I would not go into that *ahupua'a* and fish without understanding, right? That is kind of the frame I see here. The Legislation also proposed to restrict tour boats. When I had a small boat, I went to Ni'ihau to snorkel and dive. I did not fish, but it is an incredible experience to go around

Lehua. It is just a special thing. How do those uses like tour boats and residents from Kaua'i going and recreating and diving if we agree to not be taking... how is that negatively impact these issues?

Ms. Faria: Thank you for bringing that up about the *ahupua'a* practices.

Mr. Bynum: Is that an accurate way to think about it?

Ms. Faria: It is. I think the reason that the community has such a hard time is because that practice is engrained in their heads and in who they are. It is based on that Native Hawaiian tradition that this is your *ahupua'a*; you go down to that line to claim a Native Hawaiian tradition and if you go into someone else's *ahupua'a*, you are killing your own tradition by doing so. My answer to you would be yes, this is viewed and practiced as an *ahupua'a* and that is why all of these issues are coming up.

Mr. Bynum: I live in a different *ahupua'a*.

Ms. Faria: Yes.

Mr. Bynum: My understanding is that in the past, I might fish in that *ahupua'a*, but I am a guest and I do it with the permission of the leadership of that *ahupua'a*.

Ms. Faria: Yes.

Mr. Bynum: Thank you.

Ms. Faria: Thank you.

Mr. Kagawa: I believe our time is up. I apologize that we could not finish in one (1) hour. I thought that we would have taken testimony, and being that a Resolution does not really do anything besides state a position of the County Council, I did not feel that we would have gotten this deep, but it was a good discussion. I am sorry that we will have to meet with our attorneys from Honolulu. Their tab is running, so we need to deal with them and they have a flight to catch. Are we going to take a recess from this Resolution?

Chair Furfaro: Let us take a recess from this Resolution, and then if you give the floor back to me, I will tell everybody what we are doing.

Mr. Kagawa: I will turn the floor back to the Chair. For people who are here for the Ni'ihau Resolution, if you can standby, we hope to get back as soon as we can.

*(Mr. Kagawa returned Chairmanship to Chair Furfaro.)*

Chair Furfaro: Listen, I do know that this is very important dialogue as it is represented in the Resolution, but I want to say that I am going to ask the Clerk only to identify two Executive Session items now, so that we can come back and finish this and those are with the attorneys that are here for ES-708 and for ES-710. Those are the only two Executive Sessions that I would like to read now. I will ask the County Attorney to come up. The intent again is that we have

attorneys for those items here from Honolulu. To the audience, I am sorry but we will have to vacate the Chambers during the time that we are in Executive Session. If I could get these two items read, I would appreciate that. Thank you for your understanding everyone. Mauna Kea, the floor recognizes you.

MAUNA KEA TRASK, Second Deputy County Attorney: *Aloha* Honorable Chair and Honorable members of the Council. I will read these two items.

There being no objections, ES-708 and ES-710 were taken out of the order.

### EXECUTIVE SESSION:

ES-708 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Section 3.07(E) of the Kaua'i County Charter, the Office of the County Attorney, on behalf of the Council, requests an Executive Session to allow Special Counsel to provide the Council with a briefing in Syngenta Seeds, Inc.; a Delaware corporation, et al. vs. County of Kaua'i, Civil No. CV14-00014 BMK (U.S. District Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-710 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4) and (8), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session to allow Special Counsel to provide the Council with a briefing in Kaua'i Springs, Inc. v. County of Kauai, et al., Civil No. 07-1-0182 and Kaua'i Springs, Inc. vs. Planning Commission of the County of Kaua'i, Civil No. 07-1-0042 (Fifth Circuit Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro: Thank you very much. On that note, is anyone here who would like to testify on this matter before I get a motion to go into Executive Session? If not, can I motion please?

There being no one to give testimony, the meeting was called back to order, and proceeded as follows:

Mr. Kagawa moved to convene in Executive Session for ES-708 and ES-710, seconded by Mr. Rapozo, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser, Kagawa,	
	Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Members, please take no more than five (5) minutes to convene into the Executive Chambers.

There being no objections, the meeting recessed at 2:55 p.m.

The meeting reconvened at 4:19 p.m., and proceeded as follows:

*(Mr. Bynum is noted as excused at 4:19 p.m.)*

*(Chair Furfaro, the presiding officer, relinquished Chairmanship to Mr. Kagawa.)*

Mr. Kagawa: We are now back to the Resolution regarding Ni'ihau. Clerk, can we have the next registered speaker please?

Ms. Fountain-Tanigawa: The next speaker is Greg Holzman.

Mr. Kagawa: Thank you, Greg. Please state your name and you may begin.

There being no objections, the rules were suspended.

GREG HOLZMAN: Greg Holzman from Kekaha. I am a commercial deep sea fisherman. My main grounds are out at Ni'ihau, so I am one of the stakeholders out there. We have been dealing with some of this for a while and we have been asking for some dialogue with the people from Ni'ihau. Many of them are friends of ours in the community. None of us want to see any negative impacts to them. They started this thing pointing fingers at commercial fishermen so I am going to deal with what I do. I know everybody else talked about what they do, but I am out there in the deep sea. I have never seen a person from Ni'ihau fish outside in the waters, one (1) mile out, or have I seen a fisherman two (2) or three (3) miles out. The waters are real rough. I hear that they have a couple of small skiffs out there, but being that the waters are rough and it is hard to handle, it is not safe for small, little Boston whalers and things like that. From the fishermen that I have talked to who have been over there as long as I have, thirty (30) years, they have not either seen fishing boats with Ni'ihauans on them and fishing for the fish that we fish for like 'Ahi, 'Opakapaka, Onaga, and this kind of stuff. One (1) mile out is a long way. If you go and put a one (1) mile and slowly walk to the next mile marker, it is a long way. These guys swim, throw pole, lay net, and maybe they do use their little skiffs once in a while—I do not know. I have not seen it. If we are not impacting them, you have to ask yourself, "Why do we need two (2) miles?" I bring my fish back and give it to a lot of the Ni'ihauans for food in Kekaha. Most of the people from Ni'ihau are not living on Kekaha. They are living in our community, fishing in our community, and nobody has any problems with that. If there is a depletion in the resources, we are all responsible; even the people on Ni'ihau. Are they under the same administrative rules that we are as far as closed seasons, minimum sizes, net sizes, and all of the things that we have to do on Kaua'i and going out and fishing off of Ni'ihau? You guys cannot even get over there to see what is going on.

Ms. Fountain-Tanigawa: Three (3) minutes.

Mr. Holzman: I appreciate it and thank you very much.

Mr. Kagawa: Thank you for your testimony.

Mr. Holzman: I support it by the way.

Mr. Kagawa: You might have some questions. Members, I am going to ask if we can keep our questions brief because there are a ton of

speakers signed up. Are there any questions? If not, thank you, Greg. Next registered speaker.

Ms. Fountain-Tanigawa: The next speaker is A'alona Dela Cruz.

Chair Furfaro: Excuse me. Is there anyone who wants to speak that has not signed up? I think we only have about four (4) or six (6) more people.

Mr. Kagawa: I thought we had more.

Chair Furfaro: Can you make that announcement?

Mr. Kagawa: I think they are waiting strategically. But they may sign up if they want to. You may begin.

A'ALONA DELA CRUZ: *Aloha.* My name is A'alona Dela Cruz. I was born and raised in Waimea Valley. I have been fishing the waters off of Kaua'i and Ni'ihau my entire life. In today's world, it should not matter because of the mix that we have here, but in case it does matter, I am part Hawaiian. It also is my practice and cultural right to fish these waters. I know a lot of questions were touched on earlier and a lot of questions from you folks. Good points were made that I was going to bring up about what is the true purpose of this two (2) mile commercialization and why military involvement can be there; military presence and commercial presence as far as their side, but for somebody else like myself, trying to dive and support my family... trying to teach my children how to dive, throw net, and pick *'opihi*, which I do here and there, as well as they do there and here. It is a double swinging door for both... or it should be. Like I said, it is funny how they can say that it is the local fishermen and commercial fishermen that are depleting the resources there... we are in the studies to show that. Some of the points brought up was that the old *konohiki*... the old *konohiki* right was lost back... the Robinson family had a chance to reapply for that right and they did not apply for it, so they lost that *konohiki* right given by... whoever gives it... the State of Hawai'i or whoever had the right to give it at that time. Again, not that it should matter but in today's world, there are not only Hawaiians here. There are Filipinos, Japanese, *haole*, Chinese, and everybody here already. We have to look at the fact that we have to coexist as we are today. A couple of points made in a Senate meeting was that the west side people of Kaua'i were mean to the Ni'ihauans back in the 1700s or 1600s. They killed off most of the men... only two (2) men were left in the village. We live in today, 2014, where the Ni'ihauan community and the west Kaua'i community actually coexist, as far as I can remember... forty (40) years, I have been on this Earth. We have always coexisted with the Ni'ihauan community. I think we can continue to coexist.

Mr. Kagawa: Thank you, A'alona. Any questions? If not, registered speaker.

Ms. Fountain-Tanigawa: The next speaker is Shandra Macatee, followed by Mark Oyama.

Mr. Kagawa: I have not seen Shandra since 'Ele'ele School... forty (40) years ago.

SHANDRA MACATEE: This is the first time I am doing this, so I am a little bit nervous. Shandra Macatee and I am here representing myself. To my understanding, we are here to address a Resolution which is asking to take DLNR and the State out of the picture of the discussion between Ni'ihau and Kaua'i. I am against that and the reason being is because there was a point brought up, I think by Councilmember Rapozo, that he did not understand why you guys did not hear any of this stuff. Well, I work for Ni'ihau Helicopters and just for some information, when all of this stuff started, there was an invitation to legislators and the Kaua'i representatives to go over the Ni'ihau to find out about what was happening there because it is a really heart wrenching thing that is going on for the Ni'ihau people. We made arrangements through the helicopter company to transport all of these people over there. Senator Hee was one of them. For all four (4) representatives that were given invitations from Kaua'i, none of them went. I do not know if they had schedule problems or whatever, but none of them were able to go that day. My feeling is that if you put yourself in the place of the residents there, here is the government coming to you to hear what you have to say. If they offer to help you, I would take their help. I think that is where the confusion might have been because there was not anybody trying to find out during that time. There were people from different committees that went over and I think they had a really interesting conversation with the residents. They tried to make themselves clear to them to understand what the problem was and that is where all of this started and where the bills came from. I think that is probably what happened and why it all went that way instead because they made... I think because of the way that they were affected... the people that were there that were part of the government. They made it a point to try and help the people.

Ms. Fountain-Tanigawa: Three (3) minutes.

Ms. Macatee: Is that the end of it?

Mr. Kagawa: Shandra, there may be questions for you. You said you never did this before, but you did a very good job.

Ms. Macatee: I took too long.

Mr. Kagawa: Thank you for clarifying that.

Ms. Yukimura: Shandra, thank you for speaking up. You said you are against taking DLNR and the State Legislature out of the picture?

Ms. Macatee: Yes.

Ms. Yukimura: You think they should be part of the discussion or they should be allowed to just proceed on the bills that are...

Ms. Macatee: I think they should be both. I think they should be part of the discussion as well because they have stepped up to help the people. I think it would be a really awkward thing. They already have a hard time putting their trust in people. They found people who will be standing up and speaking for them and who have.

Ms. Yukimura: I see.

Ms. Macatee: To take them out of the picture... I do not think that would be a good thing.

Ms. Yukimura: This meeting where legislators were invited— was that fairly recently?

Ms. Macatee: It was last year in August.

Ms. Yukimura: Okay. Thank you.

Mr. Kagawa: Councilmember Chock.

Mr. Chock: I just want to clarify because I do not see it in this Resolution where it says that we want to exclude DLNR in the process. I think what it says is that we would like for them to cease the legislative and administrative initiatives that are moving forward and for the interest of being more inclusive and allowing further discussion across the board. I just wanted to clarify that I do not see it anywhere. Can anyone else show me that differently?

Mr. Kagawa: Councilmember Rapozo.

Mr. Rapozo: Yes, Mr. Chock, you are correct. It does not mention that. I do not know if you read the Resolution...

Ms. Macatee: I have. I misunderstood I guess.

Mr. Rapozo: Yes. I think that is part of the... it is such an emotional issue that when people hear about the Resolution, they say, "They are trying to kick out DLNR," but that is not the case. What we are saying is that... well, the Council was not invited to the island?

Ms. Macatee: No, no one from the Council was.

Mr. Rapozo: Was invited, right?

Ms. Macatee: No.

Mr. Rapozo: Do you have any idea why?

Ms. Macatee: No. I think they wanted to... in fact, it was not the Robinsons that was... I do not know why.

Mr. Rapozo: I think that would probably be appropriate to have the Council invited or at least representatives of the Council so we could...

Ms. Macatee: I think they felt that the legislators would have been a good representative for Kaua'i as well.

Mr. Rapozo: That is true and it is disappointing that the Kaua'i delegation never made it there, but for whatever reason, I know how schedules are. We could have very well had a Resolution supporting those bills had we been invited and had we seen what they saw.

Ms. Macatee: Hindsight?

Mr. Rapozo: I do not know, but it is our responsibility as Councilmembers on Kaua'i to represent everyone, including fishermen, residents of the west side, and the residents of Ni'ihau as well.

Ms. Macatee: And legislators as well.

Mr. Rapozo: Yes. We are trying and I appreciate you coming. You did a good job like Ross said.

Ms. Macatee: Thank you.

Mr. Rapozo: Thank you.

Mr. Kagawa: Are there any more questions? If not, next registered speaker.

Ms. Fountain-Tanigawa: The next registered speaker is Mark Oyama.

MARK OYAMA: Good afternoon. Mark Oyama. I support the Resolution and the reason for it is because all of these bills that come out from the Senators and legislators who are not from Kaua'i have not even come to approach our community, talk to our community, and see what drives this community. Right now, they lack community presence with these bills and they do not understand the subsistence. The whole State is talking about subsistence now. No one has looked at subsistence that our west side community... our people who live here. We coexist. The Ni'ihauans live on Kaua'i. We share water and food. We coexist. Some of the Kauaians go over there to fish, but the thing about it too is that most of the fish that gets caught over there is used for our tourists. No one has even considered our economy and the impact of the economy over here. What is going to happen if we do not have fish in our restaurants? What is going to happen to all of our fishermen? What is going to happen to our tour boat operators and the impact is going to affect every single person who works for the operators, tourism, and all that right there. To close off two (2) miles off of an island that basically, when we talk about subsistence for the people there, they do not fish for the same kind of fish that we use as far as the industry. On top of that, I gave you a handout over there. We have a lot of monk seals on the island and the Robinsons have been working with the... (inaudible) and it says here that Robinsons say that the natives knew that the seals took so much food that they felt it endangered the existence, so they killed all of the seals before. What they do now is work with the Federal government in helping with the seal count and seeing what we can do to save them. In 2010, there is an estimated eighty-seven (87) seals on Ni'ihau. There is actually estimated more than one hundred (100) over there now. If I go with eighty-seven (87) seals, that takes away eight hundred twenty-six thousand (826,000) pounds of fish a year off of Ni'ihau only. Can one fisherman catch eight hundred twenty-six thousand pounds (826,000) pounds of fish a year? Are the fishermen the blame? We are always the blame. There are other factors that could be affecting that. If you look at the map I gave you, if you look at Ni'ihau and Kaua'i, there is a ridge over there. It is kind of like we are apart, but we are brother and sister together on the map. I am sorry that it is not in color and does not show real good, but when you look at the winds and the currents, our fisheries from Kaua'i supports the fisheries in Ni'ihau. The *keikis* from Kaua'i— they have natural streams and natural rivers over here on the island. A lot of our fisheries need that water.

‘Opakapaka, Moi, Aholehole, Pāpio, Baracuda, and all those kinds of fish need that natural water and we need to watershed... the resource for that. It feeds off..

Mr. Kagawa: Mark, your three (3) minutes is up, but I think members have some questions. That can kind of extend some of what you may want to say.

Mr. Oyama: Let me just bring one more thing up. How do I know that the fish from here goes up? Well, the Taape was introduced in only the main Hawaiian islands and now it is all the way up to Midway. Our fisheries... our resources goes up north.

Mr. Kagawa: Members, are there any questions for Mark? I have one question. How far does it take to get to Kīkīaola Boat Harbor to...

Mr. Oyama: If you go at a speed where it is... if you go from Kīkīaola to the closest point on Ni‘ihau, which is probably Ki‘i Landing, and if you go at a speed that is advantageous for their fuel, not going real fast, it will probably take you about two and a half (2.5) hours to get there.

Mr. Kagawa: If you have a standard size boat, how much does it costs in gas to get there and come back? I assume fishermen do not go to Ni‘ihau every time they fish, right? They try and fish on Kaua‘i first, right?

Mr. Oyama: The thing with the channel— the channel is a very treacherous channel. It is not a channel that you can cross anytime. If you look at the structure on that... if you see that lighter shade, it is a little shallower and the darker shading is deeper water. It is about one thousand (1,000) fathoms on the sides and the top is about five (500) and goes up to (100) fathoms up there. It depends on where you are at. Because of where the wind blows, the wind wraps around and it kind of bangs the water, so you kind of have a washing machine effect in this. It is known as a really rough channel. Knowing Kaua‘i, the winds, and the weather— we always have the trade winds. It is not a place that we can go any old time. The cross right there... the high part of going across the channel... the wind comes around both sides of the island, it wraps around, and you kind of have turbulent water, so it is not someplace you can go all of the time. In the old days, a lot of people actually perished going back and forth because of the waters over there.

Mr. Kagawa: Are there any more questions for Mark? If not, thank you.

Mr. Oyama: Thank you.

Mr. Kagawa: Next registered speaker.

Ms. Fountain-Tanigawa: That is all we have.

Mr. Kagawa: Okay. Now it is time for those who have been waiting to step up. Do we have anyone else from the public who wishes to speak at this time? Step right up.

Mr. Mickens: Thank you, Ross. For the record, Glenn Mickens. Briefly, I just want to say that I totally support this Resolution. I think

these fishermen have more than made their case of what is going on. I see no harm what-so-ever. Mel was asking that young lady the question about whether it was going to interfere with their language or anything. I cannot see that point, but these people who fish are doing the community a tremendous amount of good because people do need fish on this island. I know they are not overfishing so if they have to go out there, I think they are doing their job. I totally support them and this Resolution. Thank you.

Mr. Kagawa: Thank you, Glenn. Is there anyone else from the public wishing to speak? If not, can we call up Mr. Robinson? I think he has a statement and I want to hear what the owner of Ni'ihau or manager of Ni'ihau has to say regarding banning fishing around his island. I thank you for bringing your statement Mr. Robinson.

KEITH ROBINSON: My name is Keith Robinson. I am one of the co-owners of the island of Ni'ihau. This is a general statement of conditions there which combines past history with present realities. As a direct result of a request made by King Kamehameha V, Ni'ihau island now serves as the last intact, identifiable remnant as the Polynesian Nation as the Kingdom of Hawai'i. As such, it qualifies legally for the same "Nation within a Nation" status enjoyed by certain Native American tribes in the Continental United States (US). That status also typically includes the reservation of exclusive hunting and fishing rights in each tribe's ancestral subsistence areas. Ni'ihau also has extensive connections with National Aeronautics and Space Administration (NASA), US Navy, and the Department of Defense. Ni'ihau's owners were informed about the 1941 Pearl Harbor attack eight (8) years before it happened and prepared for that attack. In the years since then, Ni'ihau has also been involved in other major national defense work. Ni'ihau is now also the only island in the entire world that supports a healthy, naturally self-sustaining population of monk seals. Everywhere else in the world, this rare species is declining relentlessly toward extinction. For obvious reasons, this extremely important conservation work was successfully kept secret from the government and the public for more than twenty (20) years; however, that knowledge is now public. Therefore, the national headquarters of the National Oceanic and Atmospheric Administration (NOAA), better known as "NOAA," is now intensely interested in the island and in its monk seal population. NOAA has tremendous, far-reaching powers under the US Endangered Species Act. I might digress from this statement slightly, but the monk seal species is an unofficially listed endangered species. In addition to all of this, a major producer of environmental documentary films is now asking to produce a documentary film about the Robinson family's endangered species conservation work on Kaua'i and Ni'ihau. They apparently want to know how one single family was able to do such successful conservation work; work that neither the Feds nor the State, nor the environmental groups were ever able to do in a State that has one of the worst environmental mismanagement records in the entire world. That is all I have to say at present; however, if any members of this Council want to ask me further questions at this time, I shall try to answer them.

Mr. Kagawa: Thank you, Mr. Robinson. Are there any questions? Chair Furfaro.

Chair Furfaro: Thank you very much for your statement. I just need some help in the history, first of all. During Kamehameha the V's deeding of the island to your family, the Sinclairs at the time— there were some special

considerations about your authority and/or deed that actually exceeding into the ocean different from others. Can you give me some clarification on that?

Mr. Robinson: At the time our ancestors purchased Ni'ihau, according to Hawaiian Kingdom law, the *konohiki* rights extended out for each *ahupua'a*. The law read, "Out to the outermost reefs or where they are no reefs, one (1) mile seaward from the low-water mark." We did ultimately lose those *konohiki* rights. We always suspected that some skullduggery was involved. My grandfather, Aubrey Robinson, made two trips around the world; partly for business and partly for pleasure. During one of those trips around the world, back in the 1920's, the government here suddenly announced that everybody had only thirty (30) days in which to register their *konohiki* rights or they would lose them. By the time he came back from that trip, he had lost them. We always suspected that something was funny there and we were not given due process of law, and that a court case might actually stand up against that kind of thing.

Chair Furfaro: I asked that because as I spent a lot of time fishing with our grandpa, the fact of the matter is that a lot of those *konohiki* rights actually exceeded and you could follow them from the mountain ridge line, down to the flats of the reef and you would also note a valley typically that would be a channel in the ocean as well. That was dissolved, you are kind of saying, to the process?

Mr. Robinson: At one point, the government announced that the holders of *konohiki* rights in the ocean had thirty (30) days, I believe it was. I have forgotten the exact time limit, but it was a fairly short time limit, according to what I have heard from Kalani English. The date given coincides exactly with what we knew about Aubrey Robinson's trip around the world, which was also what we have heard from family traditions. By the time he got back, the period had closed.

Chair Furfaro: Has there even been an effort with the family to do some kind of a conservation plan for self-sufficiency for the inhabitants that deals similar to a marine life conservation district that the purpose would be for subsistence for the inhabitants of the island?

Mr. Robinson: In order to answer that, I better go back into another piece of history which ties in to what you were asking. When King Kamehameha V finished signing over the deed to the island of Ni'ihau, he looked up from the table where he was sitting to sign the deed and he said, "Ni'ihau is now yours. The people who choose to continue living there will work for you and serve you." Then he said, "But the day may come when the Hawaiian people are not as strong in these islands as they are now. If and when that day comes, will you please do whatever you can to try to help them and preserve and perpetuate their way of life?" Our ancestors agreed to that; it was a gentlemen's agreement. A little less than ten (10) months from now, that agreement will be one hundred fifty (150) years old. In those days, when men made promises to each other, they kept them. There was none of this business about "if you want to keep your doctor in your health plan, you can."

Chair Furfaro: I understand the point you are making.

Mr. Robinson: We are still there and Ni'ihau is the last identifiable remnant of what you can call the "Kingdom of Hawai'i." Every single

one, without exception, of the island's owners and/or residents are now descended from people who are natural born citizens of the one monarchy of the Kingdom of Hawai'i. Many years ago, there was one (1) person of Japanese ancestry there who had come from Japan in the old days, but he is now dead.

Chair Furfaro: I do appreciate you sharing that with me because obviously in my years, the *konohiki* benefits and management of these areas is only what I am familiar with up on the north shore. Certainly, Grandpa Henry Gomes... grandpa was pretty much considered a *konohiki* as it relates to Hā'ena no different than Kalani (inaudible) who was considered in the far end of Wainiha and no different than the (inaudible)...

Mr. Robinson: They were considered as "elders" perhaps.

Chair Furfaro: And no different than the Akanas are in 'Anini. For example, it is known that you do not harvest *he'e* that is less than two (2) pounds so that it can reproduce itself at least twice in the cycle.

Mr. Robinson: Well, in Ni'ihau, we had a prohibition on taking small 'opihi long before the State government had a prohibition or size limit on 'opihi.

Chair Furfaro: I just wanted to ask you some of these questions because I am not that well-exposed to it, although my family is exposed to it. I thank you for those explanations.

Mr. Kagawa: Thank you. Are there anymore questions?

Mr. Chock: Thank you, Mr. Robinson. Outside your interest in...

Mr. Robinson: I am a little deaf— sorry.

Mr. Chock: Outside of the interest that you have to keep Ni'ihau closed in its surrounding waters, can you share anymore details of how it is that you as a steward to this island perpetuate the Native Hawaiian culture to ensure that its people continue to flourish and grow, specifically the language and other details that were shared earlier?

Mr. Robinson: What exactly is your question?

Mr. Chock: There were discussions earlier about how it is that you folks have helped to perpetuate the Native Hawaiian culture.

Mr. Robinson: Hawaiian is the primary language there. We can go back for a little more history. Not one of the people of Ni'ihau or the island's owner ever voted for Statehood. Ni'ihau is the only island in all Hawai'i that continues to have Hawaiian as its primary language. Not one person ever voted for Statehood. To do so would have put the final rubberstamp of approval on the overthrow of the islands by the US Government. We have cooperated with the US Government in many national defense issues since then, but we do so with the reservation that we are basically still a Nation Within a Nation. Also, I believe it was Kamehameha V... either Kamehameha IV or Kamehameha V... Kamehameha IV started the negotiations with the sale of Ni'ihau to us. Then he died and

Kamehameha V finished the signing of the deed in January of 1865. It was one of those two (2) brothers— I believe it was Kamehameha V, but it may have been Kamehameha IV that forbade the sale of liquor to Hawaiians. Up to that point, the sale of liquor had been forbidden to Hawaiians. The Kamehamehas had forbidden it. At that point, the mercantile interest who saw a great opportunity to make money pushed a proposed law through the legislature of the Kingdom stating that it would now be legal to sell liquor to the Hawaiian people...

Mr. Kagawa: I think we are kind of drifting off the subject.

Mr. Robinson: This is part of the cultural preservation.

Mr. Kagawa: But we are on the Ni'ihau Resolution banning fishing. We are not talking about the sale of Ni'ihau and the ownership right now.

Mr. Robinson: But this is how we preserved the culture.

Mr. Kagawa: Okay. Thank you. Do you have any more questions, Mr. Chock? Councilmember Yukimura.

Ms. Yukimura: Thank you for being here. At the Legislature now, I know that there was a bill initially... I am sorry if I am not current with it, but one creating Ni'ihau as its own County and one declaring a reserve or some kind of a reserve off-limits around the island. I believe those bills, at this point, have been altered or are they still alive?

Mr. Robinson: Some of them are still alive, some of them are dead, some have been altered— I have no idea what is happening. It seems to change from day-to-day. Just yesterday, more bills were introduced. I am still not quite sure what is going on.

Ms. Yukimura: What is your...

Mr. Robinson: This is not what we had originally planned. When NOAA found out there were monk seals... we have tried to keep this a secret for obvious reasons for a long time. We did not want this knowledge to get out, but finally the depredation of the Kaua'i "fishermen" and the "tour boat operators," forced us to a decision; either appeal to NOAA or else your conservation work go down the drain. We knew that once we told NOAA about these monk seals, there would be no going back. There would be no putting that genie back in the bottle because US Endangered Species laws mandate that the vital habitat for the survival of any species "shall" be protected, "may be" not perhaps, but "shall." We were terrified that if the knowledge about the existence of a healthy monk seal colony over there should get out, the "eco-Nazis" would try to drive the navy out of Ni'ihau by filing all kinds of lawsuits under the Endangered Species Act, so we kept this secret for many years. Finally, however, we faced a choice. We would have to either see everything destroyed or else we would have to appeal to NOAA. We finally decided to appeal to NOAA. NOAA immediately got very, very interested. NOAA has started negotiating with us and some of their highest ranking people came over there and checked the place out. In the meantime, there was an outfit called the 'Aha Moku Advisory Committee formed, a Hawaiian advisory committee, to advise the State Legislature and the Governor about matters pertaining to Hawaiians. As one of their first functions, they decided to go to Ni'ihau to check the

place out. These were a whole bunch of Hawaiian representatives from different islands. When the State legislators found out... or a lot of the State legislators, they decided to try to include themselves in on the junket. Everybody who has ever held any kind of political office always wants to manipulate it to get a trip to Ni'ihau. We even have minor officials pestering us that they have to go in and inspect things. We once had a census taker over there and as soon as he got there, he forgot all about his census and we had to take it for him. The point is that NOAA decided to get interested. I was negotiating with NOAA, making good headway, and when the 'Aha Moku went over there, the Ni'ihau people immediately appealed to the legislators who were among their Hawaiian legislators, and the Hawaiian legislators responded by introducing a flood of bills. My negotiations with NOAA were sidetracked.

Ms. Yukimura: I see. Your ultimate goal is... I think NOAA is separate from the State Legislature.

Mr. Robinson: NOAA is a Federal Agency that has mandated under the Endangered Species Law to protect officially listed endangered species.

Ms. Yukimura: Okay. You did not want any particular State legislation to take effect. You were looking at... I do not know the exact procedure...

Mr. Robinson: There is a difference of opinion between my brother and myself. He felt that there might be more chance to preserve Ni'ihau under State sponsored legislation. I thought that would ultimately have to be settled in a lawsuit in Federal Court under the Endangered Species Act. I still hold to that idea.

Ms. Yukimura: Okay. The goal of either your brother or yourself is to preserve the fishing resources, which is part of the habitat for monk seals to ensure that they have a sufficient habitat.

Mr. Robinson: That is right.

Ms. Yukimura: That is your goal. And as related to the preservation of Hawaiian culture?

Mr. Robinson: That is also one of our goals on Ni'ihau. We have four (4) main goals on Ni'ihau: one is to try and pay our taxes and bills and stay alive, running successful businesses; second is to preserve the Hawaiian community, language, and culture over there in accordance with what we promised to the King; third is to take care of the National Defense requirements and help out with US National Defenses; and fourth is to preserve the monk seals and environmental preservation.

Ms. Yukimura: I see.

Mr. Robinson: We have four (4) missions to juggle and it is not always easy.

Ms. Yukimura: I know. That is very clear. Thank you very much for that clarification.

Mr. Kagawa: Thank you. Are there any more questions?  
If not, can we get a copy of your testimony please?

Mr. Robinson: Sure.

Mr. Kagawa: Thank you very much.

Mr. Robinson: That is all you need?

Mr. Kagawa: Yes.

Mr. Robinson: Very good.

Mr. Kagawa: Is there anyone else from the public who wishes to speak?

Mr. Robinson: For those of you who still have questions, the King said, "I will not sign the death warrant of my people." He forbade the law. Therefore, in accordance with his wishes, until this day, there are no drugs or alcohol on Ni'ihau and that has played a large part in the preservation of the culture.

Mr. Kagawa: Thank you. Ken, do you want to speak? I will be giving a second round for those who already spoke. I know Mark had a little more to say. For whomever else, you have three (3) additional minutes as well.

Mr. Taylor: Chair and members of the Council, my name is Ken Taylor. I will be the first to admit that I do not know and understand a whole lot of what is going on out there in Ni'ihau, but I have heard today that there seems to be that the folks are opposed to this Resolution. They have also asked you to support what is going on at the State level before the alternative issues and things have been changed, so it seems to me that there is a very simple call to give the folks what they want. They do not want your Resolution; they want your support at the State level prior to the changes that have been made to the legislations that are going through. It is a very simple four (4) votes to move it forward. Thank you.

Mr. Kagawa: Thank you. Are there any questions for Mr. Taylor?

Mr. Rapozo: Four (4) votes to move the Resolution forward or four (4) votes to kill the Resolution?

Mr. Taylor: Four (4) votes to eliminate the Resolution and not move it forward.

Mr. Rapozo: What was your reasoning?

Mr. Taylor: I am sorry?

Mr. Rapozo: What was the reason? I guess I am having a hard time understanding, but you are saying for us to kill the Resolution.

Mr. Taylor: Kill the Resolution, as being asked and support their requests for the legislation that is moving forward at the State level, if I heard that correctly, before the changes were made to that activity.

Mr. Rapozo: Okay, but the fact of the matter is that the bills that are in front of us at the State Capitol have been changed. They are not the original bills.

Mr. Taylor: Right.

Mr. Rapozo: We are being asked to support bills... I guess I am getting mixed messages from the testimony because I think what they supported was the original bills. I will be honest with you, Ken and maybe you disagree, but DLNR does not impress me one bit as far as their ability to do anything right now. That is my concern as well.

Mr. Taylor: I understand. Thank you.

Mr. Kagawa: Anymore questions for Ken? If not, does anyone else want to speak? Please step up.

WARREN KOGA: Good afternoon, Councilmembers. My name is Warren Koga, resident of Kaua'i. I am here today hoping that you guys can support this Resolution and pass this Resolution today. I think this Resolution is good for the people of the State of Hawai'i; not only for Kaua'i, but for the State of Hawai'i because I cannot see how one (1) single landowner can own part of the ocean. We need to preserve the existing law that stands today. Every single island throughout Hawai'i, the main Hawaiian islands, including Ni'ihau should have the same rights. That is all I want you guys to do—please pass this Resolution and let us move forward. Thank you.

Mr. Kagawa: Are there any questions for Warren?

Ms. Yukimura: Hi Warren. Thank you for being here. I guess you would call it a "compromise" but is a compromise possible to just have... whether it is one (1) mile or something less off-limits for the public, but around Ni'ihau to protect the monk seal habitat or whatever. Is that a possibility?

Mr. Koga: The way I look at this whole thing, Councilmember Yukimura, is that if we are going to set precedence for one, you are going to open the door for not only Ni'ihau, but you are going to be opening the door for Kaua'i, O'ahu, and all these other islands. The way the law stands is "high-water mark, three (3) miles." It is a good law. Every main Hawaiian island has that law. I do not see any main Hawaiian island with one (1) landowner who owns three (3) miles of ocean that you cannot go in. I think that this law right now that stands—it has been here for a while through my generation and I just want to see it go through the next generation and the next. I think it is a good law.

Ms. Yukimura: I think I understand what you are saying, but there seems to be, invoked here, a special concern about a population of Native Hawaiians who are living in a Hawaiian community that is kind of unique around the State. I am not real familiar, but I know that there have been unique regulations for tribes in Washington State where they have certain natural resource *kuleana*—that is probably not the right word, but "rights" maybe. I understand

your concern about precedence, but to have it only for there and not precedent—would that work? Would it be functional for you who are fishermen to do that? Then I am thinking... if that was fishing. Then there is the *‘opihi* issue, which I guess is another. Some facilitated discussions about the different options might be useful and including... this is too new for me to have it all flushed out.

Mr. Koga: If we are looking at the Hawaiian community, I see that Kaua‘i has more Hawaiians than Ni‘ihau. Why do we not take care of the Hawaiian people on Kaua‘i? On O‘ahu— we have more Hawaiians on Kaua‘i. If Ni‘ihau is going to have that precedence, you are going to have these Hawaiians on Kaua‘i who want to have the same precedence. What is the difference on that?

Ms. Yukimura: There already are gathering rights that have been established by the Supreme Court and the Constitution that are available under certain conditions. I am not totally familiar with all the perimeters of it.

Mr. Kagawa: I think we are drifting— “gathering rights.”

Ms. Yukimura: There are some rights that I guess Hawaiians can claim statewide.

Mr. Koga: My point to you guys is that we just want to keep the existing law that stands today and I think that is a good law. Once we open the door, this thing is just going...

Ms. Yukimura: If you have community facilitated discussions or facilitated community discussions— those discussions may come to a different outcome, but you do not mind. You rather just suspend what is happening right now, and then have community discussions towards some kind of a solution.

Mr. Koga: Correct.

Ms. Yukimura: That is what you want. It may not be status quo. There could be a lot of different possibilities, but that is what would be discussed in these community discussions.

Mr. Koga: Right.

Ms. Yukimura: That is something you would like because that is what is embodied in the Resolution.

Mr. Koga: The thing about it is that we are following this Ni‘ihau issue with the Legislature and at the Senate level and every week we have two or three bills just coming in. We have to make a stop to it.

Ms. Yukimura: I am sorry?

Mr. Koga: We want to make a stop to it because these bills just keep on coming weekly.

Ms. Yukimura: Right, and have a different venue or place for discussion and problem solving.

Mr. Koga: Yes, because I think they are looking to make a task force on this... the next bill... they want to develop a task force.

Ms. Yukimura: It is so critical how the task force is setup because I can understand both the Robinson and the Ni'ihau community's concern or lack of trust that the process will be fair and inclusive. You guys probably have the same concerns.

Mr. Koga: It works both ways.

Ms. Yukimura: Just like when we are doing the Environmental and Public Health Impacts Study (EPHIS) for Bill No. 2491, it is so critical. Thank you.

Mr. Koga: Thank you.

Mr. Kagawa: I have one question. You kind of know all of the fishing community, but do you know if it is reasonable to dive one (1) mile out. It is kind of far, right?

Mr. Koga: You can dive, but I do not know what you are going to get.

Mr. Kagawa: We have a... he is a commercial diver, but he is not diving beyond one (1) mile out, right?

Mr. Koga: You can, like I say, but I do not know what kind of game you are going for.

Mr. Kagawa: Okay, so one (1) mile is unreasonable for the fishermen?

Mr. Koga: Yes.

Mr. Kagawa: Okay. Thank you. Are there any more questions? Is there anyone wishing to speak? For those of you who are interested in continuing for another three (3) minutes, you may step up after.

Mr. Sykos: For the record, Lonnie Sykos. I just would like to give you all some clarity about what one (1) mile means out at sea. I grew up in the Marshall Islands and Atoll was the island I lived on. If you are in a small boat, one (1) mile offshore— land disappears; three (3) miles offshore— the tallest coconut trees are out of sight. One (1) mile is really far when you are in a boat outside, but when you are on the beach, it is not really that far. For the fishermen, this is huge because their best economic zone is between about... they can address this themselves, but I would guess forty (40) fathoms to two hundred (200) or three hundred (300) fathoms. That gets your Ono, Mahimahi, plus your big bottom fish; your red bottom fish and silver bottom fish. That zone right there is basically money in the ocean. Further offshore, you find schools of Tuna and whatnot running around free, but that zone along the coastline is where everything is attracted to and that is the interaction between the food coming out of the land and out of the rivers into the ocean. When you break it down, the things that drift from the ocean up against the shoreline... that zone right there is critical to fishermen, but I am not going to hazard an opinion about what to do on Ni'ihau right now.

Mr. Kagawa:

Do you have a question?

Ms. Yukimura: I just want to say thank you to you, Warren, and everybody because it is so educational. I had no idea what three (3) miles were on this map and I really got educated on that. That is the kind of fact finding that is important for finding a solution. Obviously, we cannot have that kind of discussion around this table. What I think the Resolution is talking about is having very extensive sharing of information and discussion toward a solution. My only concern is that I have little trust of State Legislature recruited task forces. Thank you.

Mr. Kagawa: Are there any more questions for Lonnie? If not, next speaker. Mark, sorry for cutting you off the first time and I am glad I can allow you to finish.

Mr. Oyama: I just wanted to mention that I commend Mr. Robinson for what he does and how he keeps and perpetuates the Hawaiian culture over there. I do not think there is anybody here who wants to destroy that. I think he does a great job and I think everybody wants him to keep and perpetuate the culture. Sometimes I get confused of what is more important; the people or the animals? When I look at these bills and whatnot, I am not sure what we are preserving and what we are trying to help. To give you an example, I worked with (inaudible) at the college and a long time ago, I have always asked her, "Hey, why do we not get together and let us get the old time fishermen and *kūpuna* from Nīihau and work together and create boundaries. Let us create this thing where we all can agree and coexist." It never came through. I have asked the Western Pacific Regional Fishery Management Council (WESPAC) for the same thing, to get the fishermen and Nīihauans together. It never happened. Every election year, we go through the same thing to try and get the closure. There is a better way to do this. We have to coexist. We are neighbors. We are on the same County and we are all family over here. What is happening now through the Legislature is not community-based—not at all. I have actually talked to some of the Senators when they came down and went to the trip. They had no inkling and I tried to talk to them and get our point of view across. They did not even want to talk to us at that time because they had their mind made up. They were not even going to listen to our side. It was tough because it is not only about one location; we coexist. Our people go there and they have subsistence rights too and the Nīihauans are on Kauaʻi also. We share everything. I remember as being a young kid, going over there to fish, and we actually had Nīihauans come and offer us fish and we would also give them our products we had before. It has always been a sharing thing. For me personally, I think it should be community-based; not someone who is not from our island who does not even understand what impacts we have. We are getting these bills from Senators from Oʻahu, Maui, and Hawaiʻi island. They do not understand our needs, our impact, or our community. None of our legislators are pushing these bills and they understand that it would be better for us to work here on our own island. Just to educate you a little bit about *ʻopihi* is not something that you can go and get every day. You are affected by tides and the ocean. A lot of times, *ʻopihi* is in the rough water, so if you go every day, you are not going to survive. You work with the tides on that. Nature has its own way of preserving things sometimes like rough waters and all those things to help preserve.

Mr. Kagawa: Thank you. Any questions for Mark? If not, thank you. You may have a second three (3) minutes. Please come up.

Ms. Faria: Thank you again for this opportunity. Kahea Faria. I just wanted to address some of the concerns that were raised here. I know that we said that Kaua'i and Ni'ihau have always coexisted, but when we really look at the history way before beings were here, there is that story of the Sleeping Giant up there somewhere on the east side. That is the history. They died where they were because they were fighting. It was a war. When I was here, schools take their students up there to talk about the Sleeping Giant, but that history did not show a good relationship, so that was one. What the gentleman just shared about us trading, that is our way of life on Ni'ihau. People do not work so you trade with Kaua'i families. You trade fish for other things so you are supporting the island; you are supporting the people. I think one of the big reasons why we are in front of everyone is safety. People's lives were threatened and I am not sure if you folks have seen that on the news, but they showed a clip on the news. I think that is something that should be addressed and it has been going on for a long time. That is the last thing I wanted to share.

Mr. Kagawa: Councilmember Yukimura has a question.

Ms. Yukimura: Kahea, you said people's lives were threatened?

Ms. Faria: Yes.

Ms. Yukimura: I am sorry—I do not understand what you are saying.

Ms. Faria: Fishermen would come on the island and cause problems for residents.

Ms. Yukimura: I see.

Ms. Faria: It was on the news. It was really...

Ms. Yukimura: Recently?

Ms. Faria: Yes. Two (2) months maybe.

Ms. Yukimura: Okay. Thank you. I understand what you are saying now.

Ms. Faria: One of the residents came here to Kaua'i and she was threatened by another State worker.

Ms. Yukimura: What?

Ms. Faria: She was bullied by another State worker.

Ms. Yukimura: Okay. You mean around this issue, people are...

Ms. Faria: Yes. That is not safe. We were just asking to be left alone.

Ms. Yukimura:

I see. Okay. Thank you.

Mr. Kagawa: Are there any more questions for Kahea? Is there anybody else who wants to speak? Please come up.

Mr. Dela Cruz: *Aloha.* My name is A'alona Dela Cruz. I forgot to mention earlier that I am for this Resolution. Also, to touch up on one of the things that I took notes of earlier was the news clip. The news clip that was shown on television was of a woman's voice chasing two (2) children off the island because they were picking *'opihi* and that was a news clip that I saw. The pictures from those individuals... the children being chased off were about ten (10) or fifteen (15) Ni'ihauan people yelling at them to get off the island to two (2) eighteen (18) year old or seventeen (17) year old boys. On that note, one of the things that Mr. Robinson mentioned was that King Kamehameha V... one of his last statements before he stood up— King Kamehameha V said, "I will not sign the death warrant of my people." I am a *kanaka*. I am one of those people he spoke of, so he did not say the Ni'ihauan people; he said of "my people." That whole treaty falls upon the entire Hawaiian bloodline. The subject of the monk seals— is a monk seal life valued higher than human life? As a Native Hawaiian, that is just a question that I have in my head about this whole situation with the Senate and House. Again, I am in support of this Resolution to resolve our issues here for ourselves.

Mr. Kagawa:

Councilmember Yukimura has a question for you.

Ms. Yukimura: I know that Mr. Oyama gave some statistics about monk seals eating fish, but I think there has been a lot of controversy about exactly how much fish they eat. I got some information from NOAA that was different. Is it that the fishermen see that by protecting monk seals, it is threatening survival of human beings?

Mr. Dela Cruz: Well, the protection of the endangered monk seal of a habitat area where I, myself, grew up fishing— they are saying that is more important; they are protecting the seal versus the human resource... the resources that the human would survive off of. The whole complaint about the resources being depleted is that the commercial fishermen are depleting the resource, whereas they have secretly, as you said, in a period of twenty (20) years invited numerous amounts of monk seals, where today's numbers... the population is over one hundred (100). I do not know the actual number about how much fish they eat per day or per year, but I know that one (1) monk seal is a lot more than what I go over there maybe twice or three times a year and the weather conditions that would permit me to go.

Ms. Yukimura: Okay. It seems like everybody agrees that the fishing resources are declining, but some people think it is the monk seals that are causing it and others think that it is commercial fishermen, so the idea of coexistence for monk seals and fishermen does not really seem viable to most people.

Mr. Dela Cruz:

I disagree that the resources are being depleted.

Ms. Yukimura:

You do not...

Mr. Dela Cruz: No, the resources are still there. That is why I will go there to dive and fish. If it was depleted, I would not waste my time and my fuel to go there.

Ms. Yukimura: I meant declining.

Mr. Dela Cruz: Again, I still disagree on the fact that it is declining at a great rate. If there is such decline, is it the monk seals eating so many pounds per day? Is it the local fishermen that can only go there during perfect weather conditions? Like I said, I cannot go there... even if I was to do it as a lifestyle, the amount of days I can go across is numbered.

Ms. Yukimura: Okay. Thank you. It seems to me that is one fact that needs some fact finding; one, are the fisheries declining, and two, what is the cause of it?

Mr. Dela Cruz: That is the big question in the Senate Bill and at the Legislature right now—to do the studies to find out if there is a decline and what the decline is. That is what we are asking to do too. Before we can say “we have plenty of fish,” “little fish,” or “we do not have fish,” in that kind of numbers, we have to do a study to find out.

Ms. Yukimura: Until you know that, you do not know whether you can coexist or not.

Mr. Dela Cruz: I can say for myself that—I do not know how old I was when it was the first time that I went there but until today, I can still go to the same places around the island. If I want certain fish, I will go to certain places. I can go there and still catch the fish that I want. As far as it is being depleted out of my own use there, I know there is the same amount of fish there now.

Ms. Yukimura: Okay. Thank you very much.

Mr. Kagawa: Thank you. Is there anymore questions for A'alona? I have one question. The only time I have been to Ni'ihau was in 2002 and I did not see one (1) monk seal. We were not always close to land, but I did not see one. From what I am hearing—so in the past twelve (12) years, the population has grown over the years. They have been bringing some over from the Northwest Hawaiian Islands. I guess the part that I agree with you is that at the Senate and the press conferences of Senator Hee and Senator Galuteria, they say that the fishermen are taking all of their food from the people and if that is the reason why we want to ban fishing on Ni'ihau, then why are we introducing more seals there? If your reason is that the people do not have enough food to catch, then why are you housing all of these seals?

Mr. Dela Cruz: Animal life valued over human life.

Mr. Kagawa: Yes. You can house the same amount, but they are bringing in more. Why bring in more when your people do not have enough food to eat? I think that is where I kind of do not get it. Anyway, thank you. Is there anymore testimony? Please step up.

LEI'ALA KAOHELAULI'I: My name is Lei'ala Kaohelauli'i. I live on Ni'ihau and I came off the island yesterday. This was all brought about from our community. Our community asked for help, so that is why the Robinsons are helping us. I would like to share some of the complaints we have. Over the years, I witnessed sewage discharge from fishing vessels that have been to Ni'ihau, shooting of a seal, Clorox use, and I have been sexually and verbally harassed by the fishermen that have come to our island. Now it has come to a safety issue, so that is why we are asking for support. It is different today. Maybe eight (8) years ago, you could take your little skit out and jump in the water and you would be circled by fish. If you do that today, you are not circled by fish; they all runaway. It is due to the impact we have had from the fishermen who come to our island. Over the past few years, our fishing strategies have never changed, but the fishermen who are coming to our island are bringing scuba gear and they are more advanced so they have the capability to take more. In December, three generations—we were at our village at the beach. A fishing boat came about one (1) mile out with a net. He laid his net in the ocean and when the net came up, it was full of fish. I watched my dad, my husband, and my son—they were all witness to this. I took a Psychology class and one of our lessons was to study the impact of how the environment has on people. My dad's face read, "How can this happen?" My husband's face read, "If this keeps happening, how am I going to support my family? How do I put food on my table?" My son's face read, "If this keeps happening, what am I going to have in the future?" We need all the help we can get. It has become a safety issue for our island people. Our kids are as young as seven (7) years old. The boys are out fishing on their own. They are learning; they are training and that is culture for us. The girls as young as nine (9), ten (10), and eleven (11) years old want to go to the beach to pick up shells, but today we have lost that sense of security. We do not have that anymore. They had complaints where the jet skis would come up to the beach shorelines and that would scare the kids home. They would stand up and run home because they were afraid. As far as the *'opihi*, the entire community knows that when this section of the island... if we take in that section, nobody touches it. We let it rejuvenate itself. As a community, we have been able to manage how we take our resources and how much. That is why we have what we have. Now it is like we have to take a three (3) or four (4) horse ride to get enough. For the people who say that they are not affecting us—they are. There are fishing holes on the island where each family have their own fishing spot. Now because it is not there, they have to go farther to look for fish. It has an impact. The fishermen are saying that it does not, but it does. That is why we are asking for the mileage we have been asking so we can get our sense of security back. Our island is a God-free fearing island. On Sunday, everybody is in church and that is when the fishermen come to our island because they know nobody is out because we are all in church having service. Today, we have to send our men out to help watch our beaches so that the food does not get taken. It is affecting our community spiritually, emotionally, and physically for our *kūpuna* that we fly and back for their testimony. It is having an impact on us, which is why we are here today to ask for the help that we can get. That is why the Legislature was there to listen to us and that is why we are where we are today.

Mr. Kagawa:  
Lei'ala?

Thank you. Are there any questions for

Mr. Hooser: Thank you so much for your testimony. It sounds like a lot of the incidents that you talk about are actually illegal. One of my questions is did you report this or did anybody in the community report this to DLNR or other law enforcement?

- Ms. Kaohelaui'i: DLNR, I think.
- Mr. Hooser: Did they come out? You talked about Clorox, harassment, and illegal nets. No?
- Ms. Kaohelaui'i: No.
- Mr. Hooser: Okay. It was reported but they did not come out?
- Ms. Kaohelaui'i: There was an incident where the fishing net... there was confrontation with outsiders where we confiscated the net and it was sent to the Police Department. I do not know what happened after that.
- Mr. Hooser: Thank you very much. Thank you for your testimony.
- Mr. Kagawa: Councilmember Yukimura.
- Ms. Yukimura: I am very moved by you speaking up. What I am sensing is that because the agencies are not... you cannot depend on them to enforce the laws, you folks are having to watch for yourselves and be your own sort of police and that is causing a lot of conflicts, as well as fear for your security.
- Ms. Kaohelaui'i: Right.
- Ms. Yukimura: You are also experiencing actual decline of resources if you used to have fishing holes and now you can no longer satisfy your needs by fishing there, so you have to go elsewhere. It is the same thing with *ʻopihi*. You are saying that where you used to go does not have or has to be left alone, but then you have to ride farther by horse to access other sources.
- Ms. Kaohelaui'i: Right.
- Ms. Yukimura: But even if you say, "We are not going to touch this," outsiders do not follow that agreement so you cannot replenish your supplies.
- Ms. Kaohelaui'i: Right. There is an incident where we came up on a beach where there were four (4) people taking *ʻopihi* and we had just taken that *ʻopihi* the week before. It needs at least three (3) months.
- Ms. Yukimura: Right. It was too soon to take again.
- Ms. Kaohelaui'i: Yes. They were taking illegal sized *ʻopihi*.
- Ms. Yukimura: Okay. Thank you very much for your testimony because you are testifying to what you have actually seen yourself.
- Ms. Kaohelaui'i: Right.
- Ms. Yukimura: Okay. This process that is being talked about in the Resolution, community-based discussions— I can understand that it is

fearful to Ni'ihau people because it is hard to trust the process. Also at the Legislature, ironically, just like how the fishermen cannot trust the process, it is not exactly sure that you will get what you need either from that. What if there was a good community process that... even now, I hear people listening to each other and kind of wanting to help the other side figure it out. I know that there are some conflicts that are very difficult, but there might be a greater chance to actually solve the problem by having good community process. I guess I am asking if the rules are fair, whether you might be open to a good community process.

Ms. Kaohelauli'i: I would not know about the Ni'ihau community and the Robinsons.

Ms. Yukimura: Right. Am I hearing that it is something that you would have to discuss with your *'ohana*?

Ms. Kaohelauli'i: Yes.

Ms. Yukimura: Okay. Thank you.

Mr. Kagawa: Thank you. Are there any more questions?

Ms. Kaohelauli'i: I would like to respond to the questions that you were asking about military and helicopters. May I?

Mr. Kagawa: Yes. Please keep it brief.

Ms. Kaohelauli'i: Okay.

Chair Furfaro: Excuse me.

Mr. Kagawa: Mr. Chair, go ahead.

Chair Furfaro: I want to propose a question to you and see if you can resolve this. Now we are going on to 5:30 p.m. and we have a second set of attorneys that are waiting for us for conference call purposes. Originally, when we talked about putting this on with urgency, we allocated one (1) hour, and then we went and broke again at 3:35 p.m. and we are back to the item. I am willing to call the attorneys in Honolulu to defer two of the items, but I need to take a vote and have a census to do that now from the members. We can always come back and take testimony because of the item, but I need to call them because the clock is running.

Mr. Kagawa: I am okay with a deferral.

Ms. Yukimura: Which ones?

Chair Furfaro: The Executive Sessions relating to Mr. Bynum.

Ms. Yukimura: Okay, so ES-703 and ES-709. Is there any time urgency on this?

Chair Furfaro: No.

- Ms. Yukimura: I am okay with it.
- Mr. Rapozo: Are you looking at deferring it for two (2) weeks?
- Chair Furfaro: Yes.
- Ms. Yukimura: If we do not have a full Committee schedule, we could do a Special Council Meeting and have it next week.
- Mr. Rapozo: I have some pending agenda items that I will be requesting as well.
- Ms. Yukimura: If it is not urgent for you, can we do it next week?
- Mr. Rapozo: I will leave it up to the rest of the Council. Staff asked me and I said...
- Chair Furfaro: Four (4) votes to defer.
- Mr. Rapozo: Yes, if you have the four (4) votes, then let us do it. If there is testimony here, then let us take the testimony.
- Chair Furfaro: No, I said that we will take testimony, but I just wanted to defer the item because we have attorneys waiting for the conference call.
- Ms. Yukimura: We can let them go, I guess.
- Chair Furfaro: That is what I am asking. Discussion?
- Ms. Yukimura: Yes. I wanted to get to Councilmember Rapozo's questions of the attorney. If we can make a Special Council Meeting next week so we defer it just for one (1) week, I would feel better if that...
- Mr. Rapozo: I think you are talking about a different request.
- Ms. Yukimura: You are not talking about ES-709?
- Mr. Rapozo: No, I think you are talking about the one that I requested a deferral for earlier today and I said I wanted to go into Executive Session...
- Ms. Yukimura: That is ES-709.
- Mr. Rapozo: That does not require Honolulu attorneys.
- Ms. Yukimura: It does not? I thought these are the Bynum ones.
- Mr. Rapozo: No. The Sheilah case was the one that...

Ms. Yukimura:

Yes, well that is...

Mr. Rapozo:  
attorney.

I do not believe that requires the Honolulu

Chair Furfaro:  
up please?

Excuse me. Can I call the County Attorney

Mr. Kagawa:

I think we are getting close, Chair.

Chair Furfaro:

I know, but it is...

Mr. Kagawa:

We are getting close to the end of this issue.

Chair Furfaro:

He is with another client this evening.

Mr. Kagawa:

Okay.

Mr. Castillo:

Good evening. Al Castillo, County Attorney.

Chair Furfaro: The agenda item that we are dealing with,  
ES-709— will that include Special Counsel that is waiting for us?

Mr. Castillo:  
involves Special Counsel.

Yes, I believe that ES-703 and ES-709

Chair Furfaro:  
County Attorney?

Okay. Do you have a question for the

Ms. Yukimura: Yes. It involves the attorney because it was  
the attorney for Ms. Miyake's personal attorney, right? That is who is going to be  
available to discuss. Is that right? I am not sure whether Councilmember Rapozo's  
questions are for the County Attorney or for Ms. Miyake's personal attorney.

Mr. Rapozo: Whoever can answer my questions— it is  
hard when we cannot ask the questions in the open session. I do not know. I  
prepared myself for the agenda and I see the agenda. It is unfortunate that this  
happens more than once.

Chair Furfaro: Wait a minute. This happens because we  
have asked people to sign up and they chose not to sign up, so we gave information  
to those attorneys, and then we open it up to everybody speaking again. It is kind  
of hard to forecast.

Mr. Rapozo:

I understand. That is my point.

Chair Furfaro:

In all fairness.

Ms. Yukimura: May I suggest that we go into Executive  
Session on this with our attorneys in case your question can be answered by them?  
We can do that late at night if we do not need the private attorney from Honolulu.

Chair Furfaro: Let me state the question. I would like the  
County Attorney to step out with Mr. Rapozo on the nature of his pieces. I am not

saying to defer the item and that we would not take personal testimony here, but we have commitments on that attorney to meet with another client.

Mr. Rapozo:  
attorneys and...

Mr. Chair, I would release the Honolulu

Chair Furfaro:

That is the motion I am looking for.

Mr. Rapozo: Well, I do not think you need a motion. That is just calling them. When the time permits, we will go into Executive Session and if our County attorneys cannot answer them, then they cannot answer them.

Chair Furfaro: It is left to interpretation. If I am going to make a phone call to tell attorneys, "You are gone," I want a consensus. Whether you make it as a motion or not...

Mr. Rapozo:  
Session today; I still want to...

I am not saying that we defer the Executive

Chair Furfaro:

I did not say that.

Ms. Yukimura:  
Honolulu attorneys.

Chair, I am okay with releasing the

Chair Furfaro:

Thank you. Can I get a motion?

Ms. Yukimura:

If that would help.

Chair Furfaro:

That would help me.

Ms. Yukimura:

Okay.

Ms. Yukimura moved to release Special Counsel for ES-703 and ES-709 from the Council Meeting was then put, and carried by a vote of 6:0:0:1 (*Mr. Bynum was noted as recused*).

Chair Furfaro: Would you make those calls on ES-703 and ES-709 as it relates to Richard Nakamura?

Mr. Kagawa: We are back to the Ni'ihau Resolution. Is there anybody else who wants to speak on the Resolution before we call the meeting back to order for Councilmembers?

Mr. Rapozo:

Can I ask Mauna Kea to come up?

Chair Furfaro: Wait a minute. The floor is back to me, but I gave it to Mr. Kagawa so speak to Mr. Kagawa on what you are saying.

Ms. Yukimura:

I would like to finish with Lei'ala.

Mr. Kagawa: Well, we discussed a lot with her. At some point, we have to move on or we are never going to finish. Do you have a question for her?

Ms. Yukimura: Yes.

Mr. Kagawa: She wanted to respond to what she had heard previously. Normally, as a member of the public, you cannot ask the question of a Councilmember. It is done.

Ms. Yukimura: I am going to ask her the question.

Mr. Kagawa: Okay.

Ms. Yukimura: Thank you. What was your or your *'ohana's* position about the military and the... what was the other one?

Ms. Kaohelauli'i: The Safari and the helicopter.

Ms. Yukimura: Right, the helicopter and the military.

Ms. Kaohelauli'i: I wanted to share that nothing on that island happens without a community meeting with the whole community and the Robinsons.

Ms. Yukimura: In other words, you are saying that when those activities were proposed, the community was convened and you folks were okay with it.

Ms. Kaohelauli'i: Right.

Ms. Yukimura: Okay. Thank you.

Mr. Kagawa: Can I ask a question? Do they take a vote?

Ms. Kaohelauli'i: No, it is the whole community.

Mr. Kagawa: The whole community is informed, but the community does not get to vote and say "I like it" or "I do not like it."

Ms. Kaohelauli'i: The Robinsons will ask the whole community and if there is anyone in the community that rejects, they will have their say but nobody rejects because it is based on the fact that the Robinsons take care of us. They know what is best for us.

Mr. Kagawa: I was just asking if a vote was taken because normally in a democratic Country, we take a vote to find out if a majority takes a side on an issue. You guys kind of have a vote, but it is more of an unspoken vote. It is more of a vote that you guys all acknowledge that there is a majority, but there is no actual counting of who supports it.

Ms. Kaohelauli'i: What do you mean? Freely? Yes.

Mr. Kagawa: Okay. Thank you. Any more questions?

Mr. Chock: What I heard is that in order to get us together to come back to the table so we can support the needs that you folks are talking about... you need to go back and ask the rest of the island community if they

would be willing to continue to come together to have these discussions, which would include all stakeholders, including DLNR, to come to some Resolution. That is what this supports. This supports us getting to a solution, but what I am asking is if you still need to go back and ask that of your community in order for us to be on the same page.

Ms. Kaohelaui'i: I am just here on my behalf.

Mr. Chock: I understand.

Ms. Kaohelaui'i: I am speaking on my behalf. It is a community. We cannot just make calls without the community's knowledge of what goes on.

Mr. Chock: Understood.

Mr. Kagawa: Thank you. I think Mr. Rapozo has a question for Mauna Kea.

Mr. Trask: Aloha Councilmembers. Second Deputy County Attorney, Mauna Kea Trask.

Mr. Rapozo: I know it is late, but I want to get through these questions. I know Mr. Robinson mentioned that the *konohiki* opportunity was missed because the ancestor was traveling around the world. One of the bills that I am reading is basically attempting to reinstate a *konohiki* right or a *konohiki* authority by a State law. Is that something that is even possible? It is clear today by Mr. Robinson's own testimony that there is no *konohiki* right at this point. Is that correct?

Mr. Trask: That is correct. This issue raises a lot of legal and historical questions. It touches on everything; Hawaiian Sovereignty, Public Access Shoreline Hawai'i (PASH) rights, and Article 12, Section 7 of the Constitution. To fully understand it, it is going to take a lot more than just a brief answer, but what I can tell you is that basically, Kaua'i and Ni'ihau were always—I am not a fisherman. I am not from the west side. My *kulāiwi* is Moloa'a, Waipake, and Ko'olau side. However, I come from a long line of attorneys and that is what we do. Ni'ihau and Kaua'i were always politically joined together up until 1810 with the unification of the Hawaiian islands with Kaumuali'i and Kamehameha that continued until 1819 of death and up until 1824 when Liholiho visited with Ka'ahumanu. Kaumuali'i paid tribute to him and said, "Let us keep our arrangement." Out of the Kamehameha arrangement, they paid tribute to Kamehameha, but Kaumuali'i still controlled the island; him and his Chief still did. That changed in 1824. Liholiho kidnapped Kaumuali'i and Ka'ahumanu married Kaumuali'i and his son, Keali'iahonui. George Humeleme, Kaumuali'i's other son, was away studying on the east coast at the time. Kaumuali'i passes away in 1824 at forty-six (46) years old and that seemed to be the end of the line. Ka'ahumanu never had any children with Kaumuali'i or his other son. Then was the rebellion in 1824 whereby George Humeleme and the Kaua'i chiefs tried to take on Liholiho at the time and he died in July of 1824. They were massacred in Hanapēpē.

Kaua'i was never conquered by Kamehameha I; that is true, but they were slaughtered by Kamehameha II. In 1824, the population decimated. The Kamehamehas had guns and the Kauaians did not. After that, all of the chiefs from

Kaua'i were removed and relocated to other islands, and then you had a break as far as *konohiki* presence in Kaua'i and Ni'ihau. That is why you see the first land grants under The Great Māhele of 1848— people like Miriam Kekauōnohi, a Kamehameha, got the entire *ahupua'a* of Wainiha. That is why you see all the Kamehamehas owning land and claiming title. To orient you guys historically, according to Royal Patent No. 2944, which is a subject Royal Patent for Ni'ihau from Kamehameha V to Mr. McHutchison Sinclair and Francis Sinclair, January 23, 1864. Hawai'i was an independent nation with international treaties at the time with a ninety-nine percent (99%) literacy rate. 'Iolani Palace had electricity and running water and the White House did not. It was a modern nation, very much so. When you are looking at the time when this deed or purchase happened, it was not pre-contact Hawai'i; it was a different Hawai'i. When you look at the Royal Patent, there is nothing contained in the patent that talks about fishery rights. Those rights were enunciated in deeds at the time. If you look under the court cases Bishop v. Mahiko, 35 Haw. 608 (1940) and State v. Hawaiian Dredging Co., 48 Haw. 152 (1964). These are the cases that talk about *konohiki* rights and the vesting thereof. At the time, prior to 1864 when Ni'ihau was acquired, on the deed it actually says specifically, "The whole land under this sale of Ni'ihau is conveyed to said James McHutchinson Sinclair and Francis Sinclair with the exception of two lands known as Kahuku and Halawela set off to Kuakanu in the great division of 1848." Those were two Kuleana Lands claimed by a Native Hawaiian on Ni'ihau. The tract of land sold to Papapa containing fifty (50) acres, which is more particularly described in Royal Patent No. 1650. Of course with the reservation of the Hawaiian government, "all mineral and metallic mines of every description," which is what you see in your deeds today. Prior to that in June 7, 1839 via ordinance, this is a Nation of Hawai'i ordinance— this is in the Bishop v. Mahiko case; "The fishing grounds seaward of the areas reserved as 'private fisheries' except the fishing grounds seasonably placed under kapu of the tax officer of the king became public fishing grounds free to all people. Thereafter, by the act of May 24, 1851, if not earlier, the king's kapu was removed by the same act and all fisheries pertinent to government lands were made free to the people subject to the kapus of the Minister of the Interior." You saw the declining incidence of privately held fisheries since 1839, which is twenty-nine (29) before the deed to Ni'ihau.

In 1900, there were eight hundred forty (840) government fisheries within the eight (8) larger Hawaiian islands of the group free to the use of the public. The year 1900 is a very important date; it is the date of the Hawaiian Organic Act. After the Overthrow of 1893, the Organic Act— the Republic of Hawai'i to Territory of Hawai'i. The Organic Act is important because Sections 95 and 96 speak about opening the fisheries to all the public. Section 95 stated that and Section 96 described the process. These were laws passed in 1900. Section 95 states, "That all laws of the Republic of Hawai'i which confer exclusive fishing rights upon any person or persons are hereby repealed, and all fisheries in the sea waters of the Territory of Hawai'i not included in any fish pond or artificial enclosure shall be free to all citizens of the United States, subject, however, to vested rights..." Section 96, proceedings for opening fisheries, stated how you claimed your vested rights. It is stated, "That any person who claims a private right to any such fishery shall, within two years after the taking effect of this Act, file his petition in a circuit court of the Territory of Hawaii, setting forth his claim to such fishing right, service of which petition shall be made upon the attorney-general," and essentially, they condemned it. If you failed to register within the two years, you waived it. That is what Bishop v. Mahiko and the State v. Hawaiian Dredging Co. talked about. In tracking what happened in the annexation in California to the rest of the United States, they

said that was due process and it was fine. What you have here is an interesting situation whereby— and David Malo states this in “Mo‘olelo Hawai‘i” in 1835, “Oral tradition is a tough thing in Hawai‘i...” It was all oral tradition, but he writes in 1835 that oral tradition is tough is because two (2) people will hear the same thing and one (1) person will lie. In 1835, Malo said that the oral traditions are really up in the air and unknown. The difficulty with this is what is true and what is not, but I think you can tell via the documentation that in 1868, there was no description of fishery rights in Mr. Sinclair’s patent. At that time, given the legal trend, fisheries are being opened so it is unknown that they would be closed. Also, knowing the Kamehamehas historically— they were the kings, nobody else. They owned everything. Counties were not created until 1906 by Prince Kūhiō. It raises a lot of questions and there is a lot of arguing necessity for discussion.

Mr. Kagawa: We will go back to Councilmember Rapozo after our ten (10) minute caption break, which we are required by law to take.

There being no objections, the meeting recessed at 6:00 p.m.

The meeting reconvened at 6:10 p.m., and proceeded as follows:

Mr. Kagawa: This meeting is now called back to order. Councilmember Yukimura, do you have a question for Mauna Kea?

Ms. Yukimura: Yes. Mauna Kea, I appreciate the amazing history you have given us. The bottom line is that there are no existing private fishing rights, right?

Mr. Trask: Correct.

Ms. Yukimura: But that is why the issue is before the Legislature and I guess NOAA potentially... I think the Robinsons and Ni‘ihau community are feeling a need to assert some kind of protection against an all open fishery and so forth, right? I am not advocating one thing right now; I am just saying factually, that is the status of rights right now.

Mr. Trask: Correct. Again, I am not trying to advocate either. I really want to make that clear. I do not favor either side. It is an interesting thing for the State to address because you do have Article 11, Section 6 of the Hawai‘i State Constitution which states, “All fisheries in the sea waters of the State not included in any fish pond, artificial enclosure or state-licensed mariculture operation shall be free to the public, subject to vested rights,” which no longer exist, “and the right of the State to regulate the same...” It is a question of what the right to regulate is and what are these things?” As far as “*konohiki*” and the use of that term, unfortunately, I do not think it is applicable anymore.

Ms. Yukimura: No, but there are new forms of regulation that are mimicking “*konohiki* jurisdiction,” so to speak, because of the need to regulate.

Mr. Trask: That is correct. If you look at what some Native Hawaiians are doing at Hā‘ena... their similar stuff of regulation and that goes through a State process that is a Section 91-3 rule-making process.

There are ways to regulate it, correct, and it is a good thing to do because fisheries are important.

Ms. Yukimura: Right, because if sustainability is the goal, whether it is for the Ni'ihau community, which I think is of great concern or for sustainability of the fisheries and the island or the State, there has to be some kind of regulation. It has to be factually founded and so forth, but this "free for all," which is called the "tragedy of the commons," cannot continue.

Mr. Trask: There is a question as to what that means under existing regulations and there are existing regulations. Again, I am not a fisherman and I am not an expert in that aspect of it.

Ms. Yukimura: Right, but we are not just talking about existing regulations but potentially new regulations as well.

Mr. Trask: Correct.

Ms. Yukimura: Okay. Thank you very much.

Mr. Kagawa: Any further questions? Councilmember Rapozo.

Mr. Rapozo: Thank you, Mauna Kea, for that brief history lesson. I know there is a lot to grasp in this issue, but I just have a generic question that came to me when you were talking. Ni'ihau is part of the County of Kaua'i?

Mr. Trask: Correct.

Mr. Rapozo: I do not understand what the difference is between the shoreline and the coast of Ni'ihau and the coast of Kaua'i. There are portions of Kaua'i that are oceanfront or beachfront and privately owned, but yet that owner does not own the beach. What separates that landowner and Ni'ihau?

Mr. Trask: It is my knowledge that in the Public Trust Doctrine, unencumbered State lands up to the high-water mark as evidenced by the high-wash, waves, and vegetation is open to the public. The practical application to Ni'ihau is entirely different. I have never been there and I have never tried. Under the law, there is no difference.

Mr. Rapozo: So there is no law that would treat privately owned islands differently than a privately owned lot?

Mr. Trask: I do not think so. Also, if you look at the recent purchase of Lāna'i by Mr. Ellison, one (1) individual now owns ninety-seven percent (97%) of that island. His title does not go back to 1868 or anywhere near (inaudible). However, what does that mean? I do not know. It might be a question.

Mr. Rapozo: All of that property that Larry Ellison still owns still has County police and County fire.

Mr. Trask:

Correct.

Mr. Rapozo: I understand and I respect what is going on in Ni'ihau, I guess— because what I have heard today is all different types of reasoning for getting the State involved... the Legislature. Initially, it was protection of the fishing resources, but then we have heard that it is really to protect the monk seals and the cultural practices also. As I read through the bills, they talk about... most of them in fact... some of them are just... for your information, there are nine bills that were introduced and so far, five are active. The majority of them just set out to setup a task force to explore the resources. Some of them are specific to Ni'ihau and some of them are generic and general towards the State, which I tend to support the Statewide assessment of fishery resources because it is not just Ni'ihau, the whole State is going through... or possibly could be going through issues. One of the bills specifically talks about setting up the *konohiki* rights and that is the one I think I questioned. I am not sure— Galuteria submitted this... and to designate that area a private fishery. In fact, it is interesting that in the bill he talks about that if in fact the government wants to open up the private fishery for some public use, they can do that with condemnation and the land owner would be compensated to allow... not even the landowner, but the *konohiki* would be compensated for the public use of this private fishery. But in reality, according to our Constitution and our State law, that resource is the people's resource— the ocean. I question Mr. Galuteria. He is a good friend of mine, but why would he try to create a law that would first of all, in my opinion, illegally take away a public resource, give it to a private owner, and then set it up in the law that says if we want to let the public use it, we have to pay that private land owner. It could happen in Lāna'i with Ellison. It could happen to anybody who can afford to purchase an island. I am concerned that what we are trying to do is take away a right of the citizens of Hawai'i, more specifically Kaua'i, which is a public resource called the ocean. These bills, the ones that are setting up the task force, whether it is a task force setup by the State Legislature or a process here on Kaua'i locally... I think the objective is the same thing— determine if, in fact, there is a depletion of the resources out there. That needs to be done. I think the best way is as the Resolution states, a community process of the community participants that are involved, which includes the fishermen; commercial fishermen and private fishermen. As far as you know, the private lands, whether it is an island or lot on Kaua'i, are treated the same?

Mr. Trask: Throughout the State. Trying to add to some of the points you brought up— growing up on Kaua'i, I never knew anything about Ni'ihau from the east side/west side. I would hear stories about stuff, but again, you do not want to be *maha'oi* or *nīele*, so you do not ask those questions. This issue came up recently because of an incident that happened a couple of years back, and then I started to look at what is that part of the County of Kaua'i and what our relationship to Ni'ihau is. We do not have police or fire presence there, we do not have parks, and we do not have a plan for really anything that happens on Ni'ihau. Given my position, I asked, "What is our liability, if any, to the people over there given that we have absolutely no presence?" I do not know what the answer to that is. That is a question. To further complicate matters, the State recently recognized Indigenous Native Hawaiians as a political entity that has the right in the future to make their own sovereign nation. Kaho'olawe is held in trust by the State through management of DLNR and a Kaho'olawe commission. Upon which time when the nation is established, Kaho'olawe will be turned over. The question is what

happens on privately owned islands? The people of the nation of Hawai'i... if you can trace your ancestors back to pre-1778, you are the "Nation of Hawai'i." When every Hawaiian talks, they are speaking for the Hawaiians essentially; we all feel that. This has an implication to that as well. Again, I am not trying to advocate sides or say anyone is wrong of what they feel or what they know, but like Malo said, the *na'au* was the most deceptive of all things. Something needs to be done and something needs to be figured out in a *pono* way; a right way. Nonetheless, these are questions that have been brought up.

Mr. Rapozo: I obviously heard from the resident of Ni'ihau of some disturbing concerns that she had some incidents that occurred involving some criminal activity. They do not have anywhere to go. I do not know if they have Ni'ihau police over there. It is very hard to convey this without sounding like I am against the Native Hawaiian culture and Native Hawaiian issues, but the fact is that this County is still obligated and responsible for those things that happened on Ni'ihau, as it would be in Princeville in a private hotel, in a private property. The County still has some obligation to provide services.

Mr. Trask: And to prosecute.

Mr. Rapozo: Exactly. I am familiar with the Clorox case because those people got prosecuted, and in fact, they went to jail. I remember that case because one of them was my cousin. I am not proud of it, but that is the fact. I do not dive, but my point is that those things happen offshore would not be a County issue anyway, but those things that happen onshore and on island— we do not even have a presence there. How far does our obligation go? Maybe that is just the question for you, Mauna Kea, that you need to take back and try to help us understand. Again, I would love to go to the island and I am sure I am probably not welcomed there right now, but it is what it is. We represent all people in the County of Kaua'i/Ni'ihau— we do. All I am trying to do is bring some equity. For the State Legislature to come in with all these bills shotgun— Galuteria introduced several of them. What is the motivation? I do not know. What is the objective? I do not know.

Mr. Trask: On that point, I have spoken with Senator Hee's staff about this issue and I do believe that they are all coming from a good place and their motives are good. It is just a tough, tough question and it really raises everything that has happened in Hawai'i since the Māhele in 1848, which is what we are starting with or prior to that— Kaua'i/Ni'ihau in 1810. It is tough and I think these are good efforts. Ultimately, you are the policy makers. I wish I had more to tell you, but it is a difficult situation.

Mr. Rapozo: I am sure we will have more discussion. I guess the analogy is, like I said, if you have a Native Hawaiian landowner that can trace the genealogy back that is on Wainiha, Moloka'a, or wherever and can the State put a *konohiki* right to that person?

Mr. Trask: The interesting thing is on that point, and I am not trying to analogize that to the current landowners Bruce or Keith Robinson, but if you look at Kamehameha Schools, you have a large landowner with their rights. The City and County forced them to lease to fee conversion of their lands in Kāhala to sell to private people. Waikīkī condominiums were sold as individual units to private people and that is what happened to them. It is not to say that the

law is inequitably placed, but again, these are Native Hawaiian land issues and Native Hawaiian land law is different than any other place in this Country. It is a big issue that you guys are faced with.

Mr. Rapozo: Thank you.

Mr. Kagawa: Are there any more questions for Mauna Kea? If not, thank you, Mauna Kea.

Mr. Trask: Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Rapozo moved for adoption of Resolution No. 2014-10, seconded by Mr. Hooser.

Ms. Yukimura moved to amend Resolution No. 2014-10 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Mr. Chock.

Ms. Yukimura: I just want to explain that they are ideas that I had that came forward as I got testimony from the public. For example, I am asking that the discussions be based on Kaua'i so that people do not have to go to Honolulu. I had first preferred a deferral, but in talking to one of the introducers of the Resolution, I guess there is a desire to pass this out today. My desire to defer was to try to put more clarity about the nature of the community-based discussions because I have seen too many State Legislature initiated discussions that have gone nowhere and actually some of them have been on the genetically modified organisms (GMO) issue. They have ended with no real solution that people could agree on or that satisfied the needs of either side of the table. Especially after Councilmember Chock and I attended a session over the weekend on joint fact finding, I feel like the design and the way that the community discussions are designed and facilitated are really critical. If we are to use the goodwill that I hear in the room and the passionate need for solutions, we really need to design a process well. This was what I could come up with in a short timeframe and I am hoping that maybe there will be other ways to input a discussion later.

Mr. Rapozo: Was that a motion to amend?

Ms. Yukimura: Yes.

Mr. Kagawa: Is there any further discussion on the amendment?

Ms. Yukimura: I just want to point out that one of the amendments is that the Resolution needed some deadline or time definite for this community discussion, so I have put in January 15, 2015, which is next year before the Legislature convenes. I am not sure that will give enough time, especially if some research is needed, but that was the best I could do in the short amount of time. If there are other people with other ideas for a better deadline, I am open to it. I do know that we need some deadline because to leave it open-ended is not good either.

Mr. Kagawa: Thank you. Is there anymore discussion on the amendment?

Chair Furfaro: As we talk about some facilitation and the fact that the Resolution, as amended, would deal with community discussions based on Kaua'i and so forth; can I assume that we are talking about some opportunity for money to manage this?

Ms. Yukimura: For this thing to happen well, we will need...

Chair Furfaro: We only do things with the idea that we are doing it well, so is this a money bill that you will be introducing? Is this something that would come up in the budget discussion? That is my question.

Ms. Yukimura: Those are good questions, Chair. I would feel much more comfortable if it were done at the County level rather than the State legislative level, but I have not had time to scope it to cost it out and think about whether in all of our other priorities we have the ability to do that. I can tell you that I will try to give more thought to it to scoping it out like who should be at the table, what kind of scope it should be, and talk to some people who know facilitation well about how we could do it. I guess it is too early for me to commit to anything else at this point, which is why I wanted to delay it, but that is not in the book's writing.

Chair Furfaro: I want to make sure that you understand that my questions were for the intention they were, but it was understood that if we are doing this, it would be something that was facilitated and managed at the County of Kaua'i level and not the State.

Ms. Yukimura: Yes, Chair. Thank you. I feel like the introducers of this Resolution meant for it to influence the State deliberations and because there are some proposals for a State level task force, I do not know where that is going to go. I would love it if the State would give us the money to do it, and then we could craft it and design it here, but I do not know what the Legislature would think about that.

Mr. Kagawa: To answer your question, the reason why we rushed this Resolution onto the agenda was the fear of the fishermen thinking that without even asking the Kaua'i community, the Legislature up in O'ahu is just pulling something off really fast. This was to give the community on both sides a chance to express their opinion and I am glad that we had people from both sides express their opinion and share their knowledge. I think we accomplished that. If we do have a majority, we do want to send a message from the Kaua'i County Council as far as how we feel they are taking up these issues about banning fishing and affecting our Kaua'i and Ni'ihau residents. I think that is the reason why we rushed this in. We wanted to have the Council have an opportunity to state our position and I think that is what it is accomplishing.

Mr. Hooser: I want to thank the co-introducers, number one, for taking initiative on this and for the people in the public for taking the time to show up because it is a very important issue. I do see the Resolution and I support the amendments. I see that the purpose is sending a message to the State. Clearly, the County has no jurisdiction and regulatory authority over the waters at all, so I would hesitate to commit County resources to do a task force and mislead

the community or build false expectations, if you would, spend the money, and then the State just ignore it. I would support having this be a strong message to the State, "This is how you should do your work," and they should fund it and make it happen. Clearly, we do not have authority and I think it is important that the community is here today and the people watching and reading about this know that this is a Resolution; it has no force of law. We cannot make the State do anything. This is a strong statement from the Council and I am glad to be a part of it and supporting it, but this does not have the force of law so people should not expect that one way or the other, that this will make things happen. Hopefully, it will influence the decision makers. As previously stated, I think the legislators that I know who are involved in this are coming from a good place. They are mostly Hawaiian, I think— Senator Hee, Senator Galuteria, and Senator English, but they do not live here and this is the fundamental premise of this Resolution is that before you make these decisions, you should come and engage the community. I think they mean well, but they do not really understand the landscape and the impacts, which are clear from the discussions that we do not have good science and good data. There is a difference between near shore waters, off shore waters, different kinds of fish and nets, and diving. There are a lot of moving parts and there is a lot debate of whether or not it is depleted or declining, or not. There is a whole lot of work, in my opinion, in addition to the community dialogue. A lot of research needs to be done before these decisions be made. I support the Resolution and the amendments. One side of me wants to say, "Do not make any decisions impacting our neighborhood, County, and community without doing the same process." I like what you guys have done, so I appreciate it and I would be happy to support it.

Mr. Kagawa: Thank you, Councilmember Hooser. Is there anymore discussion on the amendments?

Chair Furfaro: I think that was my whole point. We are doing an amendment over here about facilitating and having a place here. We are not providing any money, nor are we asking in the amendment for the State to fund it. The way I see it is basically, we are overpromising and under-delivering. That is my comment. Thank you.

Mr. Kagawa: Councilmember Yukimura.

Ms. Yukimura: I can understand the Chair's position and understanding of this. The amendments that I proposed— I just wanted to give a little bit of guidance to the State Legislature and at least, one, have it here so whether it is the Ni'ihau *kūpuna* or the fishermen, they do not have to fly to O'ahu. Then by putting in the words "carefully designed and facilitated," I am trying to tell them that they have to be really careful about how they do it. I think Councilmember Hooser's points are well-taken. We do not have real jurisdiction over the subject matter...

Chair Furfaro: No, we do not.

Ms. Yukimura: Although, we have picked up the slack whether it is pesticides or Coqui frogs, even where we did not have jurisdiction. I also want to say that the Ni'ihau community has been very leery of this Resolution, but I hope that you can see some possibility for achieving your goals through this process because believe me, even though it looks like there are some legislators who are your advocates, the legislative process is so messy that it does not guarantee that you are going to get what you want. I have heard a really good sense here from

all sides that there is a desire for some kind of “win-win.” I really think that if people talk to each other and work through the research and fact finding, there may be arrangements that could satisfy both needs. You do not know until you start working in a safe process that is well-designed. I am sorry that I cannot guarantee that well-designed process, but I think we can speak for it, at least, and support it. We all have to kind of take risks to try it because there is so much at stake. My intention is that it is not going to just help one side, but that it is really going to help us come to some lasting solution and there may actually be some lasting solution if we look and work together hard enough.

Mr. Kagawa:

Thank you. Councilmember Chock.

Mr. Chock: I support the amendments as well. I just think that in order to be stronger, we have to work on this together but we just have not been given the opportunity to, so I think the request is valid. This is a request; this is a Resolution. It is not a bill or a law, so it opens the opportunity for us. The only thing that I could look at in terms of the Chair’s concern is more of a recommendation for the facilitation so that the State will step in and recognize the need for our community involvement in this process. I believe that the more we try and segment ourselves in every way within this community or outside in any other island— it is just a matter of time. This world is getting smaller. There is nowhere to go, so we have to work together and come up with the solutions together. We are really talking about poor management of our resources. As a Native Hawaiian, I am ashamed of it that that is what it has come down to, so I can see where there is mistrust and they want to just put a wall up and keep everybody out, but there is only so far you can go. I am dedicated to seeing that, “Let us help the situation.” The more people involved in this on every level, the better outcome I believe. That is what I want and why I am supporting it.

Mr. Kagawa: Thank you. Is there any further discussion?  
If not, can we have a roll call on the amendment?

The motion to amend Resolution No. 2014-10 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1 was then put, and carried by the following vote:

FOR AMENDMENT:	Chock, Hooser, Kagawa, Rapozo,	
	Yukimura, Furfaro	TOTAL – 6*,
AGAINST AMENDMENT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(\*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua‘i, Council Chair Furfaro is noted as voting silent but shall be recorded as an affirmative vote for the motion.)*

Mr. Kagawa:

Is there any more discussion?

Mr. Hooser: Yes, just a little bit more. I spoke earlier in length, but I just want to make it clear that I think there is a very valid place in our scheme of things in the ocean waters for a modern *kapu* system or fish conservation areas. There are areas where the fish are depleted and where we need to take a break and preserve those fishing areas. It is a complicated subject and we need to look at the details of that. Sometimes it is certain fish or certain fishing methods. I

do not support just a blanket, big hammer “no fishing for anybody except one little group for miles and miles” kind of thing. I just want to be clear that I do support conservation measures, but they need to be well-thought out and there certainly needs to be community engagement to take into consideration of the various needs of the various stakeholders. Thank you.

Mr. Kagawa:

Thank you, Mr. Hooser. Further discussion?

Mr. Rapozo: Not long ago, we had a Resolution come up here regarding “No Parking in Kōloa.” We asked a very simple question of the Administration, “Did you communicate with the neighbors that may be affected?” “No, we did not.” “Well, can you go out and talk to the people who are going to be impacted by this Resolution before you come up with a resolution?” Then the following meeting— do you remember what happened? The Administration would like to withdraw its request for the Resolution. When you go out and talk to the people that impacted, you find out that maybe there are some external issues that we did not think about. This whole Resolution boils down to the last paragraph on page number one of the Resolution. It is kind of what Mr. Hooser talked about. It says, “Be it resolved by the Council of the County of Kaua‘i that it requests that matters affecting the islands of Ni‘ihau and Kaua‘i be resolved through community-based discussions and negotiations between its residents.” Take out Ni‘ihau from this equation— any issue that involves this island and Ni‘ihau should be addressed by the citizens of this island and Ni‘ihau; not by some State legislators in *koa* offices that are trying to do their best, but they are doing it with information from a single source and not talking to everybody on the island. That is not right. The task force or the community-based efforts— I am not suggesting the County does it because like Mr. Hooser said, it is a State issue. We do not regulate the oceans and fishing off seas, but I think the discussion has to be held here on Kaua‘i. If we have to take it to Ni‘ihau, we will take it to Ni‘ihau if we need to get in front of those residents. To simply shoot out these bills— again, a lot of these guys are my good friends, but just totally... I think we are not ready for that right now. The data and information is not there. I respect them for what they are trying to do, but at the end of the day, the voices of a huge segment and impacted portion of the community of the County of Kaua‘i, which includes Ni‘ihau, is not heard. The short time we spent on this Resolution today on Kaua‘i, in my opinion, was probably more of a better dialogue than the State had during their talks on this issue. Imagine if we expanded this to a series of community meetings where we can all come to kind of consensus that, “How can we both benefit from legislation on this issue, if we even need that?” That was not done. These bills were shot gunned out. I was never contacted. I do not know if any of you were ever contacted by our State Representatives. None of us were. The next thing I know, I see in the newspaper that the State wants to make Ni‘ihau their own County. Really? Wow. Interesting. To create a whole new County without any dialogue with the County of Kaua‘i— I know the Mayor was never contacted either because it made the newspapers prior to the Mayor even knowing that this was going on. That, to me, is disrespectful number one because you have a Mayor of a County that was not even given the courtesy that, “By the way, there is a band of us here at the State that wants to take a separate this County and create a new one.” That is just not how it works... it should not work. I appreciate the amendment, Councilmember Yukimura. I hope that we can get unanimous consent on this Resolution and the State can get this tomorrow. Thank you.

Mr. Kagawa:

Councilmember Yukimura.

Ms. Yukimura: I would like to have it streamlined that the discussion be described as “community-based” rather than “community discussions.”

Mr. Rapozo: It says “community-based.”

Ms. Yukimura: No, the last paragraph says, “Be it further resolved... until facilitated community-based discussions...” Can we write it in?

Mr. Rapozo: Where are you?

Ms. Yukimura: If you look at the amendment, it is the number four.

Mr. Kagawa: Switch the words?

Ms. Yukimura: It may come down to some stakeholder discussions that you cannot have a continuously changing group to have the discussion and just have anybody come in when they want to and go out. That is why “community-based” would be better.

Mr. Kagawa: Scott has informed me that if you make a motion, we can do that right here. Do you want to make a motion to switch the words?

Ms. Yukimura moved to amend the word “community discussions” to “community-based discussions” in number four of the amendment as shown which is attached hereto as Attachment 2, seconded by Mr. Chock, and carried by a vote of 6:0:1 (*Mr. Bynum was excused*).

Mr. Kagawa: Is there further discussion?

Mr. Chock: I just want to say that I was saddened to hear the testimony by our Ni‘ihau community and intend to follow-up on whatever I can to help support and respond to the illegal and disrespectful things that are happening out there as soon as I can. It is just something that we should not have to deal with and that is all I wanted to say. Thank you.

Mr. Kagawa: Councilmember Yukimura.

Ms. Yukimura: I just want to thank every person who came today and spoke or just be present. For me, it has been a really big education. The way things can get better is when people speak up, respectfully, and that is what happened today so thank you very much for that.

Mr. Kagawa: Chair Furfaro.

Chair Furfaro: First of all for the public, I want to make sure you understand that when someone votes silent in our procedural piece, it means that my vote goes with the majority. Going silent is also a way to indicate that I am just not completely satisfied. I do not want to “overpromise” or “under-deliver” to the community. In fact, it is not clear to me or not real tangible who we are expecting to facilitate these pieces as it relates to kind of a... who is managing the data? Who is finding themselves doing the research and so forth? Those are going to be costs and I just feel that it is not really clear here. I will be

supporting the intent of the Resolution, but I want to make sure we understand that I do not think we have all of the tangible parts here. That is why I voted silent, but my vote goes with the majority. Thank you.

Mr. Kagawa: Thank you, Chair. For me, the language is clear because the County of Kaua'i does not regulate the activities in the water, so I believe the State will know that it is the State Legislature and Department of Land and Natural Resources' responsibility to regulate or do these facilitated community-based discussions on Kaua'i. She said "on Kaua'i" because she does not want this held in O'ahu. As we seen, Lei'ala came over in a week's notice to come from Ni'ihau and it can be done that we can have them come over and participate. I certainly was not happy when I first heard in November or December where they did a press conference with Senators Hee and Galuteria. Basically, what they said was, "We want to ban fishing. Commercial fishermen are catching all of the fish. People from Ni'ihau rely on the fish to get their income and to eat so they can survive there. That is why we are establishing this ban." I am not confident that this ban is the reason why they want the three (3) mile boundary. I think the owners really want this island to be private and they want their privacy extended three (3) miles around the land. For me, I certainly believe that they have been good for the Ni'ihau community. If I was a private landowner, I may have wanted the same thing but the reality is that this is unprecedented. I went to the University of Hawai'i and one of my roommates was a Hawaiian Studies Major. His name was Kalei Ka'eo, so I used to have Haunani-Kay Trask and all of these Hawaiian Studies guys come over and one of the things I remember them saying was that in Hawaiian Studies, you cannot own the water. Nobody owns the beach or the water and that is free and open to everyone and that goes way back in Hawaiian times. I believe that this applies here. While the Robinsons own the land, they cannot own the water; however, we can help address these harassment issues. I think we have fishermen that go there that would not stand for that kind of action among fellow fishermen to treat the people of Ni'ihau with disrespect. It is us going there to fish in their area so we should be respectful of them and not treat them... even if they express to our Kaua'i fishermen that they do not want them there, it is there right. They live there and I do not feel they are doing anything wrong by telling the fishermen "go away" or "do not fish in our island." Then again, the law says that our fishermen can fish there. There are Hawaiians who are full-time fishermen that fish there and support their families and they struggle. It is not easy being a commercial fisherman. The price of gas and the supplies like fishing gear needed—it is tough. They do it because they love the ocean and they do not want to work for a boss; that is why they do commercial fishing. They do not get rich doing commercial fishing. We have to allow all Hawaiians to be represented equally and I believe that this Resolution is a good Resolution and it gives the Legislature some direction in talking to not only a small group of Hawaiians, but all Hawaiians and all of our people of Kaua'i who are part of the community. Anyway, that is how I feel and I will be supporting this Resolution.

The motion for adoption of Resolution No. 2014-10, as amended to Resolution No. 2014-10, Draft 1, was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(Mr. Kagawa returned Chairmanship to Chair Furfaro.)*

Chair Furfaro: Mr. Kagawa, I will take the meeting back from you. We are required to give our people a dinner break. We can go as far as thirty (30) minutes past the hour. I would like to take a few minutes to see what we can clean up, and then take a break at 7:00 p.m.

Ms. Fountain-Tanigawa: Okay. This brings us back to page number five, C 2014-76.

CLAIM:

C 2014-76 Communication (02/28/2014) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Glenn Miyasato, for damages to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Ms. Yukimura moved to refer C 2014-76 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chock, and carried by a vote of 6:0:1 *(Mr. Bynum was excused)*.

COMMITTEE REPORTS:

PUBLIC WORKS / PARKS & RECREATION COMMITTEE:

A report (No. CR-PWPR 2014-02) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be received for the record:

"PWPR 2014-02 Communication (01/31/2014) from Council Chair Furfaro, requesting the presence of the County Engineer, to provide an update on the status of safety improvements for Lae Road and Wawae Road in Kalāheo, efforts to address safety concerns relative to draining and runoff, and the need for a guardrail across the property at 2963 Wawae Road,"

Mr. Chock moved for approval of the report, seconded by Ms. Yukimura, and carried by a 6:0:1 vote *(Mr. Bynum was excused)*.

FINANCE & ECONOMIC DEVELOPMENT (TOURISM / VISITOR INDUSTRY / SMALL BUSINESS DEVELOPMENT / SPORTS & RECREATION DEVELOPMENT / OTHER ECONOMIC DEVELOPMENT AREAS) COMMITTEE:

A report (No. CR-FED 2014-15) submitted by the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, recommending that the followed be approved on second and final reading:

"Bill No. 2529 A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2013-753, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND *(Police Department Workers Compensation Medical – \$110,000)*,"

Mr. Chock moved for approval of the report, seconded by Ms. Yukimura, and carried by a 6:0:1 vote (*Mr. Bynum was excused*).

RESOLUTIONS:

Resolution No. 2014-04 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE COST CONTROL COMMISSION  
(*Brandon H. Shimokawa – At-Large*)

Ms. Fountain-Tanigawa: We are notified by the Boards and Commissions Administrator that they are requesting that this Resolution be received for the record.

Chair Furfaro: That is confirmed and also until such time that they are satisfied with an explanation from the County Attorney, I recommend that we go ahead and receive this.

Mr. Rapozo moved to receive Resolution No. 2014-04 for the record, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 (*Mr. Bynum was excused*).

Resolution No. 2014-09 – RESOLUTION APPOINTING A REPRESENTATIVE AND ALTERNATE TO THE EXECUTIVE COMMITTEE OF THE HAWAII STATE ASSOCIATION OF COUNTIES AND NOMINATING A REPRESENTATIVE TO SERVE AS A DIRECTOR ON THE NATIONAL ASSOCIATION OF COUNTIES BOARD OF DIRECTORS: Ms. Yukimura moved to adopt Resolution No. 2014-09, seconded by Mr. Hooser.

Chair Furfaro: Are there any comments? Mr. Rapozo, do you want to address any of this?

Mr. Rapozo: No. Thank you very much.

Chair Furfaro: You have our support.

The motion for adoption of Resolution No. 2014-09 was then put, and carried the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2534) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2013-753, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND AND SOLID WASTE DISPOSAL FUND (*Solid Waste Disposal Fund, Solid Waste Recycling – Other Services - \$700,000*): Ms. Yukimura moved for passage of Proposed Draft Bill No. 2534 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for

April 9, 2014, and that it thereafter be referred to Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Mr. Rapozo.

Ms. Yukimura: Can I say something?

Chair Furfaro: Sure.

Ms. Yukimura: I just want to say that I have a lot of questions about this, but I presume that we will have Public Works Solid Waste before us in Committee after the public hearing. Thank you.

The motion for passage of Proposed Draft Bill No. 2534 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 9, 2014, and that it thereafter be referred to Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Proposed Draft Bill (No. 2535) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2013-753, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND AND SOLID WASTE DISPOSAL FUND (*Solid Waste Disposal Fund, Solid Waste Disposal – Other Services - \$500,000*): Ms. Yukimura moved for passage of Proposed Draft Bill No. 2535 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 9, 2014, and that it thereafter be referred to Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Mr. Rapozo, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Proposed Draft Bill (No. 2536) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2013-753, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Department of Finance – Administration, Special Projects – Kauai Humane Society (Cat Licensing Fees) - \$10,000*): Ms. Yukimura moved for passage of Proposed Draft Bill No. 2536 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 9, 2014, and that it thereafter be referred to Finance & Economic

Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Mr. Rapozo, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

BILLS FOR SECOND READING:

Bill No. 2515, Draft 1 – A BILL FOR AN ORDINANCE AMENDING SECTION 21-9.2 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO INTEGRATED SOLID WASTE MANAGEMENT

Ms. Yukimura: Mr. Chair, I would like to defer this to April 23 but I am not making a motion right now just so that we can have a discussion.

Chair Furfaro: What is the date you are requiring? April 23?

Ms. Yukimura: Yes.

Chair Furfaro: Okay.

Ms. Yukimura: According to Staff, that would be the meeting after the Supplement Budget... before the Supplemental Budget— excuse me. It would be after our budget hearing on Solid Waste so we would have a chance to understand their budget proposals, get a reading of the status quo of where things are at in Solid Waste, and we would be able to see if they have any plan for how they would additional revenues. I think it is just wise to defer it. It does not mean that we have to support it, but it gives us the option if there is a good plan that can be funded, much like the roads plan that we talked about today.

Chair Furfaro: Okay. I am going to let there be a little discussion here because once we defer, there is no discussion. Mr. Kagawa, you have the floor.

Mr. Kagawa: Thank you, Mr. Chair. As we talked about the vehicle weight tax fee earlier this morning— it is just raising it and our roads will get better. I do not mind— well, I do mind raising fees or taxes. The Solid Waste Tipping Fee is already one of the highest in the State, so we want to be the highest... we want to be the “undisputed champion” of the tipping fees. I have a problem with raising the tipping fees and not hearing from the Administration or from the Solid Waste Management team on what we are going to do better. If we are going to charge the people more money, what are we going to do better? Automated trash service is, for me, not good enough. It is a good step, but I need to hear more as far as what we are going to do to divert more of our recyclables, et cetera, and things that can be prevented from going into the landfill. Those are the kind of things that I need to hear before I make us the “undisputed champion of tipping fees.”

Chair Furfaro:

Is there further discussion? Mr. Rapozo.

Mr. Rapozo: Thank you, Mr. Chair. I guess I concur with Ross that we have had the discussion and have beaten this thing up quite a bit. Again, this was Council-initiated. This Bill came out of the Council; Mr. Bynum introduced the Bill. It did not sound like there was any dialogue with the Administration. When the Administration came up, they did not have a plan. I am not going to support a Bill or a deferral on a Bill that was just created to raise revenue. I just cannot do that... that is not what we do. We meet with the Administration and the Departments, find out if all efficiency measures are taking place and if all cost-cutting measures were done, and as a last resort, if we have to raise taxes or fees, we will have that discussion at that time. But in this case, it was done backwards— we are going to raise the fees because we can. For that reason, I am not going to supporting a deferral and not support this Bill. Budget is one (1) week away. In fact, Friday, we get the Mayor's budget and I think that is when the discussions should happen. Thank you.

Chair Furfaro:

JoAnn, you have the floor again.

Ms. Yukimura: I agree with Councilmembers Kagawa and Rapozo. I am certainly not ready to vote for this Bill today, but I think we would be wise to defer it so that question we can see what the situation is in Solid Waste. We can still vote against it on the 23<sup>rd</sup>, but if we need it as an option, it will be available. Otherwise, to introduce the Bill would be too late to address it as a budget issue, I think. I have to say that with these two new Bills that we just passed on first reading, I am really concerned, but I still want to keep the option until we know for sure that we do not need it or do not want it.

Chair Furfaro:  
motion to defer?

If there is no more discussion, can I have a

Ms. Yukimura moved to defer Bill No. 2515, Draft 1 to April 23, 2014, seconded by Mr. Chock, and carried by the following vote:

FOR DEFERRAL:	Chock, Hooser, Yukimura, Furfaro	TOTAL – 4,
AGAINST DEFERRAL:	Kagawa, Rapozo	TOTAL – 2,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Bill No. 2529 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2013-753, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Police Department Workers Compensation Medical – \$110,000*): Mr. Rapozo moved to adopt Bill No. 2529 on second and final reading, and that is be transmitted to the Mayor for his approval, seconded by Mr. Kagawa, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Mr. Kagawa: Chair, can I make a suggestion as we move forward... not suggestion— can I make a request? Shay has been waiting all day for item. I would like to see if we could get her testimony in with her item, and then break or whatever we plan on doing.

Chair Furfaro: I will consider that in just a moment when I get some things cleared up with the Clerk. Does that pretty much bring us to the conclusion of our items on the agenda?

Ms. Fountain-Tanigawa: Yes, Chair.

Chair Furfaro: Okay.

Ms. Fountain-Tanigawa: We have some items in Executive Session, and then we need to come back out and vote on three items in open session. Those are requests for Special Counsel.

Chair Furfaro: Let us do this, let us have them read by the County Attorney, take some testimony, and then we will break for dinner. Could you read those items in Executive Session that we do need Al to come up and read the numbers?

Ms. Fountain-Tanigawa: Yes. This is for ES-703, ES-707, and ES-709.

Chair Furfaro: I guess I would need a motion to defer some of the other items as we just sent the attorneys home.

Ms. Fountain-Tanigawa: If the Council will be discussing ES-703 and ES-709 with the County Attorney's Office... if you intend to go into Executive Session, we do not need to defer unless you want to defer it...

Chair Furfaro: We will go into Executive Session for ES-703, ES-707, and ES-709. Did we dispose of ES-708 and ES-710?

Ms. Fountain-Tanigawa: Yes, we have.

Chair Furfaro: Okay. That was what I was referring to. Al, can you come up and read ES-703, ES-707, and ES-709 for us. Then, as requested by Mr. Kagawa, I will take public testimony and break for dinner.

There being no objections, the rules were suspended.

Mr. Castillo: Good evening, everyone. Al Castillo, County Attorney. I will read the items.

#### EXECUTIVE SESSION:

ES-703 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing regarding the settlement in Tim Bynum vs. County of Kaua'i, et al., Civil No. CV12-00523 RLP (United States District Court), and related matters. This briefing and consultation involves the consideration of

the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-707 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4) and (8), and Kauai County Charter Section 3.07(E), the purpose of this Executive Session is to provide the Council with a briefing in Lynell Tokuda, et al. vs. Chris Calio, et al., Civil No. 13-00202 DKW-BMK (U.S. District Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-709 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing to discuss the Council's obligations as it relates to Sheilah Miyake's request for payment of attorneys' fees in Tim Bynum vs. County of Kaua'i, et al., Civil No. CV12-00523 RLP (United States District Court), and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro: Thank you very much. As we have a couple of people in the audience, before we break for dinner, I will be taking testimony on these items. Please come up.

Mr. Sykos: Good evening, Councilmembers. Thank you. For the record, my name is Lonnie Sykos. I would like to speak to the issue of ES-709, as well as to the general issue of the volume and evidently increasing rate of expense for hiring external Counsel for the County. In regard to Sheilah Miyake's request for attorney's fees, having nothing to do with the issues that were involved in all of the actions, if we are not going to terminate Sheilah Miyake or take some other severe human resource action for malfeasance or not performing their job, and if she did in fact do her job, then it would seem that paying her legal fees is a slam dunk. At nine hundred dollars (\$900) an hour, one ponders why we spend so much time in these Executive Sessions. I simply realize how difficult all of this has been. I certainly do not know the details of the ramifications of everything, but something has to change in that this dysfunction is too expensive for the public to maintain paying for, nor do we have the stomach to continue paying for all of this. Hopefully, we will be able to pay all of our legal fees for the various employees who legitimately should have them paid. My understanding of being a government employee, which I was for the State of Hawai'i and State of California, is basically if you are not going to be fired, your legal fees should be paid for what occurred while you were doing your job. God bless and Godspeed in figuring all of this out and getting this off of our agendas and properly resolving these issues for all the various parties. Tip of the hat, thank you for taking "the bull by the horns" in dealing with it and a scolding for all of this occurring in the first place.

Chair Furfaro: Thank you, Lonnie. There are no questions for you. Shay, you can come up and give your testimony. I will just go ahead and give you your six (6) minutes right up front.

SHAYLENE ISERI: Good evening, Council Chair Furfaro, Vice Chair Chock, and members of the County Council. I first would like to begin by having you reference page number eleven and twelve. I wanted to clarify, for the

record, the County Attorney's statement made on February 27 that he was not recused from the case. This is totally contrary to what I was told. On February 5, I asked Al Castillo, while here at the Council Chambers, whether or not the County was going to pay for my travel costs to attend the hearing on the motion to dismiss. It was at this time that Mr. Castillo informed me that he had gotten kicked off the case. I asked him when he got kicked off the case and he said he does not remember. I asked him what was the reason for him getting kicked off the case and he informed me that it happened in Executive Session, so he could not explain to me why. He then said that he had forwarded my E-mail, because he had gotten kicked off the case, to Jennifer Winn and that she would respond to me, which she did, with respect to my travel arrangements. I then heard Mr. Castillo on February 27 speak after we had spoken about his conflict... speak that he was not recused in a direct request by Councilmember Rapozo on whether or not he was recused from the case. He said he was not and that, in fact, Jennifer Winn became the point of contact. I then approached Mr. Castillo after he finished testifying right here in this Council Chambers and asked him why he lied to the Councilmembers because he had made those statements to me on February 5, and that he did, in fact, tell me that he was kicked off the case. He confirmed that he said that he was kicked off the case and that it was only a "matter of semantics." I asked him for the reason for getting kicked off and that this discussion had occurred and that he had informed me that he could not tell me because it occurred in Executive Session. He confirmed with me that he said those words; however, it was not really what he meant. I told him that I possibly had a tape recording of him and my conversation on February 5, and then he said he wanted to see or hear the tape recording and then he would speak to me about that later. It is clear that this County Attorney has absolutely zero credibility with this Council or with anyone else.

Aside from that, I am going to have you reference page number one. Two (2) weeks ago on February 27, 2014, we were here on this item and I witnessed, as you did, a blatant violation of Council Rules and Robert's Rules of Order. These rules are created to do exactly that: establish order and professionalism at meetings. Councilmember Bynum purposely failed to follow the rules that he voted to adopt. It is clear that Mr. Bynum abused his power as a Councilmember by utilizing improperly, a question of personal privilege to promote his own self-interest that is clearly prohibited. First, the agenda item was not even called, and then he proceeded to speak out in turn, which even members of the public are not allowed to do. He then claimed the question of privilege, and without even stating a question, proceeded to make a self-serving statement, thereby violating the rules again. Not only did he speak, he deliberately spoke on his own case where he was suing the County, an item he had been barred from participating in for over a year. Furthermore, it was also done intentionally out of turn as he knows that no one would have expected that he would have engaged in speaking on a prohibited content, which enabled him to speak for a rather long time. We sat in frustration before the public was rescued by Councilmember Rapozo who called the "Point of Order" and he was stopped. Even then, Bynum continued to argue to continue finishing his egotistical speech, even knowing that he was violating the rules. Fortunately, that was prohibited and he left the room. Even more egregious than that is the fact that portions of the content of his statement are patently false. As you read his statement, I would point out highlighted items or capitalized items. This was a verbatim statement that I transcribed of Tim Bynum's abuse of personal privilege at the February 26, 2014 Council Meeting. He said, "I have made no public statements since he posted his personal statements." This is an absolute lie. He made numerous statements that I would have you reference page numbers two and three from The Garden Island, Star Advertiser, Civil Beat, and Kaua'i Eclectic.

He also called the KITV News, as well as Hawai'i News Now. He made these statements that "he had discovered overwhelming evidence of misconduct by a group led by Iseri-Carvalho" and that "this was a blatant abuse of power," and that "he would demonstrate that a criminal complaint brought against him earlier was baseless." He said, "The suit was about making individuals accountable and helping to prevent deliberate mistreatment of others." He went on to say that this was "malicious prosecution against him" and that "the acts that we committed," Sheila Miyake and myself, "amounted to purposeful deprivation of his constitutional rights." He said that "there were major abuses of power, planned and perpetuated by County officials." He also said that "there was serious wrongdoing by the Prosecutor in a number of areas, which are truly hurting people, programs, institutions, and our community." He made numerous statements, yet he comes before this body, his colleagues, and lies and says that he "has made no public statements since he posted his personal statement." Right after we saw his statements after the meeting, he ran to Hawai'i News Now— such hypocrisy. After lying that he had made no statements, he immediately ran to Hawai'i News Now after the meeting to reveal a settlement offer that none of us had yet to see. Numerous requests were made and only yesterday was I provided a draft, which is on page number six through ten of your document. Is this appropriate for a public servant, who currently works for the County, run to the media to brag about getting rich off of the County and hurting the community and taxpayers that he took an oath to serve? I bring your attention...

Chair Furfaro: Excuse me, Shay. That is six (6) minutes, so I will give you one (1) more minute to summarize.

Ms. Iseri: I will bring your attention to his statement, "We are preparing a showdown in the case with the County's motion to dismiss and insurance companies got involved, and much to my surprise, the County was moving to settle the case. I want to do that." It is totally false. The County was never moving to settle the case and we never wanted to settle the case. It was clear from the February 25 meeting that all Councilmembers that spoke indicated that they wanted to have the motions to dismiss heard. For him to go out and claim that, especially since the tentative agreement you have been provided with on page numbers six to ten, indicating that there was absolutely no wrongdoing by the Prosecuting Attorney's Office, that in fact, the money that is being paid came directly from the insurance company and the agreement does not even have the County signing off on it. It was Bob Katz, the Special Counsel's indication to me that he wanted this Council to take responsibility and issue what is the truth. He said at the very least that I should be entitled to have this Council prepare a press release when the documents are signed to state that there was no wrongdoing by the Prosecuting Attorney or my Office in light of Bynum's television news release, which he called an "outrageous..."

Mr. Castillo: Chair, she has been given more time.

Chair Furfaro: That is my call. I gave her one (1) more minute, so that is my time.

Ms. Iseri: That there was an "outrageous distortion of the facts that was given to Hawai'i News Now" and that the County clearly states that not only did it not agree to the settlement, it vehemently objected to it. The truth matters. The County Attorney is supposed to be the protector; the shield of the County. In fact, what he has done is consistently held up a knife to our throats

in releasing all of these funds. This case is truly a travesty of justice for the people of Kaua'i and I hope this Council can rehabilitate the wrongdoings that have occurred.

Chair Furfaro: That was your time. You have a question from Councilmember Yukimura.

Ms. Yukimura: Shay, in your first issue about the County Attorney, did he use the words "kicked off the case?"

Ms. Iseri: Exactly. That is why those are the exact words I used in my E-mail to Jennifer Winn.

Ms. Yukimura: Okay.

Chair Furfaro: Mr. Rapozo, I have already gone twenty-five (25) minutes past the dinner break, but go ahead. You have the floor.

Mr. Rapozo: Yes, I understand. Do we have page numbers six to ten? Did we receive those pages from anyone? I do not remember seeing it in our... I have it here. I just got it right now, but in the packet that our... I do not recall seeing that in our...

Ms. Fountain-Tanigawa: We have not received it.

Mr. Rapozo: My question is how did you...

Ms. Iseri: Yesterday afternoon, I made numerous requests to Robert Katz who said he was not involved in any of the drafting that Richard Nakamura was involved in. Unbeknownst to my attorney, we received a copy yesterday at about 1:00 p.m. In reference to your question, Councilmember Rapozo, look at the... do you guys have the E-mail stringed from Mr. Richard Nakamura? On March 11, Richard Nakamura sent this and said, "As you are aware, we have forwarded numerous versions of our proposed release to Mr. Breeze, who is the person representing the insurance company. Each has been rejected by Mr. Breeze. Given the instruction, Mr. Breeze has provided to me, I will accordingly forward your version of the release to Plaintiff's Counsel without comment from myself and other Counsel representing each of the Defendants. Please be advised that all of the Defendants will look to Everest to remedy any problems or deficiencies related to the release and your associated language." Clearly...

Chair Furfaro: No further comments. You answered his question and referenced the page.

Mr. Rapozo: I guess my concern is that—I am not aware of... maybe this was what was going to be discussed today in Executive Session from Mr. Nakamura. This was dated relatively recently, between March 10-11, so I am trying to understand what this is saying. Maybe you can help me understand what this is saying from Mr. Nakamura.

Ms. Iseri: What we have been told is that our attorneys, including Bob Katz, have not participated in the drafting of these documents. In fact, the Defendants did not want these documents sent over, but

they were ordered by the insurance company to provide the only version that the insurance company would accept. Clearly, it appears that our Counsel is deferring its decision-making authority once again and not protecting the interest of the County in allowing the insurance company, to again, dictate the terms of the agreement and our Counsel deferring and not making comment, even though they object to it. If there is an objection to the settlement terms, then this settlement document should be annulled or void and the County should revert back to getting the case and proceed with the motions to dismiss.

Chair Furfaro: Okay, that is your opinion. That will be a discussion for us in the near future, which is going to be next week when I defer date-specific. Are there any more questions? If not, thank you, Shay.

Ms. Iseri: Thank you.

Chair Furfaro: I will call the meeting back to order.  
Mr. Hooser, you have the floor.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Hooser: Thank you, Chair. I would like the Chair and this body to consider what might be an appropriate way to move forward. It seem like this is the third or fourth time that a similar situation has occurred and in terms of one (1) person coming up, presenting their side, and no rebuttal. Councilmember Bynum is not here and he is restricted by whatever conflicts, so we hear the same hammering over and over again. I certainly do not feel that it is my position to debate people that are giving testimony. At the same time, I do not agree with all of the facts and statements that are presented. I do not believe, quite frankly, that much of it is always relevant to the posting, if you would. I defer to the Chair to do that. For example, the posting today is on the settlement agreement and much of the discussion was on Councilmember Bynum's point of personal privilege, which I do not believe is directly relevant.

Chair Furfaro: First of all, I want to make sure that we all understand that when Mr. Rapozo raised the question that personal privilege came up, we consulted with the County Attorney and we did not let him continue.

Mr. Hooser: Right. I am just saying that that discussion about that point is not about the settlement. It is a separate discussion and if we want to post that discussion and have that discussion, then we can. The bigger picture is this ongoing issue. Either we post it somehow and get it on the agenda and hash it out or we do an investigation or whatever. I do not know what the answer is, but it seems to be going on internally. Again, for example, statements are made that the Councilmembers said this. Well, I did not say that. Maybe some Councilmembers said it, but I did not say it. Again, I do not want to debate what is going on because of the nature of the discussion. Things are said like the "allegations are frivolous" and "without foundation." Well, Judge Seabright ruled in his statement that they do not appear to be frivolous, unreasonable, or groundless. Again, it is not my position as an individual Councilmember to debate individual people giving their testimony. But given the circumstances, I am not sure what we should do from this point on. I do not necessarily expect a solution now, but I feel like for the record, we need to put it out there on the table because if we continue to

defer this, we continue the same thing and it is awkward and I think it is inappropriate in many respects.

Chair Furfaro: Thank you for your comments. We will be addressing that and I understand exactly where you are coming from because today we had people that gave testimony on something that they have very few of the facts on and they were talking to me as if I was discriminatory and prejudice, which is kind of hard to bite your tongue sometimes, especially when I have a completely different set of facts. I have to say nothing at the time and I have to identify what is in my official capacity. Your points are well-taken. If we did not have four (4) hours of testimony on a Resolution today, we would have had an opportunity. Unfortunately, that was an important item to certain Councilmembers and to the community as well. We are going to be revisiting with Nakamura on the 19<sup>th</sup>. Am I correct?

Ms. Fountain-Tanigawa: Yes.

Chair Furfaro: Your point is well-taken. On that note, I would like to say that it is 7:30 p.m. and I would like to give the Staff a dinner break. Can we limit it to thirty (30) minutes? Members, any problem with that? When we come back from dinner, we are going to go right into Executive Session. Can I have a vote to go into Executive Session?

Mr. Kagawa moved to convene in Executive Session, seconded by Ms. Yukimura, and carried by the following vote:

FOR EXECUTIVE SESSION:	Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: We will break for dinner and come back at 8:00 p.m. to go into Executive Session. We are on a recess.

There being no objections, the meeting recessed at 7:33 p.m.

The meeting reconvened at 8:35 a.m., and proceeded as follows:

Chair Furfaro: We are back from our dinner recess. To the Clerk, we have some business in open session and we also have the deferrals on those two items for one (1) week. Can you read those items for us, please?

#### COMMUNICATIONS:

C 2014-35 Communication (01/16/2014) from the County Attorney, requesting authorization to expend funds up to \$8,000 to retain Special Counsel to represent Henry Barriga in Lynell Tokuda, et al. vs. Chris Calio, et al., Civil No. 13-00202 DKW-BMK (U.S. District Court), and related matters: Mr. Kagawa moved to approve C 2014-35, seconded by Mr. Rapozo, and carried by the following vote:

FOR APPROVAL:	Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

C 2014-36 Communication (01/16/2014) from the County Attorney, requesting authorization to expend funds up to \$8,000 to retain Special Counsel to represent Sherwin Perez in Lynell Tokuda, et al. vs. Chris Calio, et al., Civil No. 13-00202 DKW-BMK (U.S. District Court), and related matters: Ms. Yukimura moved to approve C 2014-36, seconded by Mr. Kagawa, and carried by the following vote:

FOR APPROVAL:	Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

C 2014-58 Communication (02/14/2014) from the County Attorney, requesting authorization to expend funds up to \$15,000 for Special Counsel's continued services provided for Defendant Chris Calio in Lynell Tokuda, et al. vs. Chris Calio, et al., Civil No. CV13-00202 DKW-BMK (U.S. District Court), and related matters: Ms. Yukimura moved to receive C 2014-58 for the record, seconded by Mr. Rapozo.

Chair Furfaro: Is there any discussion on the motion to receive? Go right ahead.

Mr. Kagawa: All three of these authorizations for attorney's fees was because of the unfortunate case that happened in Lāwa'i where an officer ended up shooting and killing an individual. It is always unfortunate when things like this happen, but when you are in the line of duty and serving as a police officer, sometimes decisions have to be made and this is when we end up in cases like this. It is very unfortunate. I know some of the family on the other side of the victim and I just know it is a difficult case. That is all I have. Thank you.

Chair Furfaro: Is there any further discussion? If not, can I have a roll call vote, please?

The motion to receive C 2014-58 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

#### EXECUTIVE SESSION:

ES-703 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council to

provide the Council with a briefing regarding the settlement in Tim Bynum vs. County of Kaua'i, et al., Civil No. CV12-00523 RLP (United States District Court), and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Ms. Fountain-Tanigawa: There is a request to refer this item to a Special Council Meeting next week on March 19, time to be determined.

Mr. Kagawa moved to refer ES-703 to the March 19, 2014 Special Council Meeting, time to be determined, seconded by Ms. Yukimura.

Chair Furfaro: Is there any further discussion?

Mr. Rapozo: I have one.

Chair Furfaro: Go ahead.

Mr. Rapozo: I have one request that we be provided with all of the available documentation pertaining to the case before the 19<sup>th</sup>. We should be getting the information as it becomes available, in my opinion.

Chair Furfaro: That is what I hope to meet with you about afterwards.

Mr. Rapozo: Okay. Thank you.

Chair Furfaro: Any further discussion? Again, we need to make sure and ask the County Attorney's Office to coordinate the appropriate time for the Special Council Meeting as we were not able to execute the questions we wanted. Can I have a roll call vote for the referral?

The motion to refer ES-703 to the March 19, 2014 Special Council Meeting, time to be determined, was then put, and carried by the following vote:

FOR REFERRAL:	Chock, Hooser, Kagawa, Rapozo,	
	Yukimura, Furfaro	TOTAL – 6,
AGAINST REFERRAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	Bynum	TOTAL – 1.

Ms. Fountain-Tanigawa: The last item for this evening is ES-709.

ES-709 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing to discuss the Council's obligations as it relates to Sheilah Miyake's request for payment of attorneys' fees in Tim Bynum vs. County of Kaua'i, et al., Civil No. CV12-00523 RLP (United States District Court), and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Ms. Fountain-Tanigawa: As with ES-703, there is a request to refer this item to the Special Council Meeting next week on March 19<sup>th</sup>, time to be determined.

Ms. Yukimura moved to refer ES-709 to the March 19, 2014 Special Council Meeting, time to be determined, seconded by Mr. Chock.

Chair Furfaro: Is there any further discussion?

Mr. Kagawa: Real quickly, I had discussed at a previous meeting, the status of Sheilah Miyake's attorney's fees. She approached me. The amount was significant. I will say that for a Planning Inspector, I cannot see how she will be able to pay those fees on her salary. It is very unfortunate that we will not be able to cover her attorney's fees. If we have a policy of paying for other people's attorneys' fees, I think being that this case was settled... I think in being fair, we need to consider as a Council if we are going to be fair to her as well. Thank you.

Chair Furfaro: Any further dialogue? If not, I am going to make a housekeeping request. In the future, if you are approached by individuals about putting something of this nature on the agenda, I would really appreciate the discussion with me in advance and certainly refer to them. I understand your point, but I would like to...

Mr. Kagawa: Can I respond?

Chair Furfaro: Sure.

Mr. Kagawa: When she approached me, this must have been nine (9) months ago... a while ago. She did not ask to put it on the agenda. She just asked me if the County can please help her out because her attorney's fees were mounting. She believed that she was being sued in her capacity as a County employee and felt it was the County's obligation to represent her as well so that is all I have. Thank you.

Chair Furfaro: Again, if you could just so note my comment. It is very hard to rebuild something, especially now that I am hearing that the request was made nine (9) months ago. Anyway, that was just a footnote for this.

The motion to refer ES-709 to the March 19, 2014 Special Council Meeting, time to be determined was then put, and carried by the following vote:

FOR REFERRAL:	Chock, Hooser, Kagawa, Rapozo,	
	Yukimura, Furfaro	TOTAL - 6,
AGAINST REFERRAL:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	Bynum	TOTAL - 1.

Chair Furfaro: That concludes our business today. I would like to adjourn this meeting and let B.C. call it a night as well. We are adjourned.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 8:44 p.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA  
Deputy County Clerk

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(March 12, 2014)  
FLOOR AMENDMENT  
Resolution No. 2014-10, Relating to Ni‘ihau

Introduced by: JoAnn A. Yukimura

Amend Resolution No. 2014-10 as follows:

- 1) Amend the 4<sup>th</sup> paragraph to read as follows:

“WHEREAS, these initiatives and efforts have led to community [confusion, misinformation,] controversy, concern, and premature rule making at the legislative and administrative levels of the State; and”

- 2) Amend the 5<sup>th</sup> paragraph to read as follows:

“WHEREAS, the communities and residents that would be [most] significantly impacted by any regulatory change should have a [clear] voice in all formal and informal discussions or processes that concern the island of Ni‘ihau; now, therefore,”

- 3) Amend the 6<sup>th</sup> paragraph to read as follows:

“BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA‘I, STATE OF HAWAII, that it requests that matters affecting the islands of Ni‘ihau and Kaua‘i be resolved through carefully designed and facilitated community-based discussions and negotiations [between] among its residents[.] and other key stakeholders to be held on Kaua‘i.”

- 4) Amend the 7<sup>th</sup> paragraph to read as follows:

“BE IT FURTHER RESOLVED, that the Hawai‘i State Legislature and Department of Land and Natural Resources [cease] suspend any ongoing legislative and administrative initiatives [that are ongoing or are being planned] to address the management of coastal and marine resources around the island of Ni‘ihau[.] until facilitated community discussions based on Kaua‘i are completed, but no later than January 15, 2015.”

(Material to be deleted is bracketed. New material to be added is underscored.)



(March 12, 2014)  
FLOOR AMENDMENT  
Resolution No. 2014-10, Relating to Niʻihau

Introduced by: JoAnn A. Yukimura

Amend Resolution No. 2014-10, as amended, by amending the 7<sup>th</sup> paragraph to read as follows:

“BE IT FURTHER RESOLVED, that the Hawaiʻi State Legislature and Department of Land and Natural Resources suspend any ongoing legislative and administrative initiatives to address the management of coastal and marine resources around the island of Niʻihau until facilitated [community] community-based discussions [based] on Kauaʻi are completed, but no later than January 15, 2015.”

(Material to be deleted is bracketed. New material to be added is underscored.)

